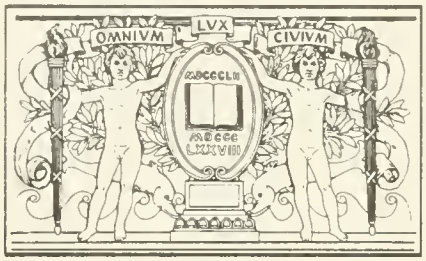
BOSTON PUBLIC LIBRARY
3 9999 06317 510 1

IV 62
B 38



BOSTON
PUBLIC
LIBRARY

9381
.1A33

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

PRICE FILING UNDER NRA CODES

By

Enid Baird

WORK MATERIALS NO. 76

VOLUME II

TRADE PRACTICE STUDIES SECTION

MARCH 1936

OFFICE OF NATIONAL RECOVERY ADMINISTRATION

DIVISION OF REVIEW

PRICE FILING UNDER NRA CODES

By

Enid Baird

TRADE PRACTICE STUDIES SECTION

MARCH, 1936

U. S. Dept of Commerce
2/23/38

3. The Scope of the Code.

The approval of NRA had to be secured for many actions of the Code Authority for the asbestos industry. One of these that caused considerable debate and discussion between the NRA and the code authority was the definition of the term "Affiliates". "Affiliates" of members of the industry, according to the code, were to be subject to the code, the definition of the term, therefore, was of importance in determining who should wile prices. In September, 1934, the sub-code authority for the brake lining industry proposed that certain large private brand buyers be regarded as affiliates. The NRA took exception to this and the proposal was rejected; after further attempts to secure a definition satisfactory to the Administration the matter was dropped.(*)

4. Standard Price Filing Forms

On January 11, 1935, the Code Authority for the valve and fittings industry wrote to the deputy in charge of the code submitting a standard price filing form, "....which we are endeavoring to bring into general use in our industry for the purpose of price filing...." The deputy submitted the form to the advisory boards and divisions. The Legal Division and Research and Planning Division objected to its use being made mandatory, and the Consumers' Board felt it was unwise to approve it even as a suggested form. The price filing form was withdrawn for further industry consideration, without formal action. One aspect of the form to which all parties in the NRA took exception was a clause which provided for the filing of minimum, rather than actual selling prices. On January 21, 1935, the deputy in a letter to the code authority objected to this aspect of the form. The letter read in part as follows:

> "....In the first place the Valve and Fittings Code Authority is not empowered to issue such an interpretation. The NRA is the sole authority in this respect. Moreover, the word 'other' cannot be interpreted in any way but its true meaning; namely, that there shall be no deviation in prices filed by them either up or down. In this respect, therefore, the Code Authority has exceeded its power in interpreting 'other than' to mean 'lower than', which has an entirely different meaning...."(**)

(*) See"Manufacturers' Control of Distribution; a Study of Trade Practice Provisions in Selected NRA Codes", Trade Practice Studies Section, Division of Review, March, 1936, Part II, Chapter IV.

(**) Documents referred to above are in NRA files, valve and fittings industry code authority folders.

In the shovel dragline and crane industry, the code authority also desired to secure a standard form for price filing. In connection with this, the deputy administrator in charge of the code on September 19, 1934, wrote the administration member of the code authority as follows:

> ".... I have wired Mr. Lutkin that no attempt should be made to force the standard price list form upon members of the industry without first having the approval of the form by the Administrator. It would seem better to report this form to the industry, stating that the accompanying form or its equivalent should be used that the Code Authority may have uniform filing of prices. It is understood that the Code Authority will not attempt to make the use of this form mandatory...."

Later, the form was submitted for official approval in order that it might be made mandatory. The Research and Planning Division and the Consumers' Advisory Board both strongly objected to it. The former, in a report quoted in a letter from the deputy to the code authority dated December 18, 1934, contended that such a form was both contrary to policy and contrary to the provisions of the code for the industry, which provided that each member should "individually publish his price list".(*)

E. Supervision Subsequent to Action (Corrective)

1. Price Fixing Activities

In a number of instances the Administration found it necessary to reprimand code authorities for activities connected with price filing which were tending, or might tend, toward price fixing. One of these, which merits consideration in some detail, concerned the mayonnaise industry.

In the summer of 1934, a price reduction on mayonnaise and salad dressing was announced by one of the largest producers in the industry. The code authority met, declared that an emergency existed and asked that the Administration approve their findings. Prior to the hearing on the matter, the large producers in the industry, in conference with a representative of the Administration, agreed upon an upward revision of prices; thereafter the code authority requested that the hearing on the emergency be postponed. In making this request, Mr. W. F. L. Tuttle, Managing Agent of the Code Authority, in

---

(*) Letters quoted are in NRA files, shovel, dragline and crane industry.

a letter to Deputy Administrator Walter White, dated July 7, 1934, said:

> ".... If the conditions which caused the emergency continue, I will immediately request the Administrator that he promptly fix a date for a public hearing. May I report to you those conditions, which, if continued, will result in a continuance of the emergency...."

Then he proceeded to list a series of prices for the various sizes of both mayonnaise and salad dressing, with differentials between advertised and unadvertised brands, and stated that the emergency would exist if prices fell below those he has specified. In reply, Mr. White stated, in a letter dated July 11, 1934:

> "....The conditions which you report with respect to price may be true in a general way, but I very strongly advise against any inclusion of these statements in bulletin form, as such a procedure could only be interpreted as a deliberate price fixing activity. It seems to me that the principal factors in this business can establish their price schedules and then they must disregard a certain amount of nonconformance by the smaller factors. If any small factor threatens to increase his volume to a point where disruption of the market is threatened, then that man should be dealt with individually by the code authority or their representative. I trust that your industry may continue to stabilize its own affairs without the necessity of government intervention...."(*)

Mr. White's warning appears, however, to have largely gone unheeded for the code authority shortly thereafter virtually ordered the filing of higher prices. A code authority bulletin dated July 23, 1934, reads:

> ".... The Code Authority in view of the recent substantial increase in oil, has voted by telegram to amend the'Lowest Reasonable Cost' figures previously adopted by it and submitted to the Administrator for industrial recovery following its declaration that an emergency existed in this Industry..... It was thought necessary by the Code Authority to adjust only the unadvertised brands of salad dressing as the item that was sold at an improper level

---

(*) Letters quoted above are in NRA files Mayonnaise Industry.

and in vital need of adjustment in view of rising ingredient costs...."

(then follows a list of prices on three sizes of salad dressing).

"Sales below these figures, in the opinion of the Code Authority as expressed by its action, would constitute destructive price cutting. The Code Authority reaffirms its purpose of eliminating destructive price cutting in this industry and hopes that this will be accomplished by the voluntary individual action of manufacturers in their efforts to rehabilitate this Industry and their own businesses. However, if it cannot be accomplished in such manner, then the full powers of the Code and of the National Industrial Recovery Act, together with its penalties, will be fully utilized...."(*)

In connection with the code authority bulletin just quoted, mention may be made of a letter dated July 24, 1934, sent by Mr. Otto Seidner, a member of the mayonnaise code authority, to Mr. Lester S. Dame, assistant deputy administrator. Mr. Seidner, objecting to some of the actions of Mr. Tuttle, referred to the bulletin quoted above, which he stated he had just received. He also enclosed a copy of a letter sent to him by a fellow member of the code authority. Speaking of the latter he said:

"....It would seem from this letter than I am not the only one who is convinced that the Mayonnaise Industry is being run by Mr. Tuttle, who is evidently taking dictation from someone else."

Then, referring to the code authority bulletin he continued:

"I also received a circular letter from Mr. Tuttle this morning, in which was stated that the Code Authority had agreed to this and voted this and voted that.... But I have not had an opportunity to say whether or not I agreed to vote on any question. This is not the first time the members of the Code Authority have been notified that they have agreed to do things of which they knew nothing...."

(*) Bulletin in NRA files, mayonnaise industry.

In reply Mr. Dame wrote to Mr. Seidner of July 26, 1934:

> "....While I have been a little doubtful of some of the actions taken by Mr. Tuttle I have felt that up to the present time they were in the best interests of the Industry and of all concerned. However, I must agree with you that he has possibly overstepped his bounds in connection with some of his latest bulletins, where he states that the Code Authority has made such determinations....I believe it is up to you and the other members of the Code Authority to investigate to your own satisfaction whether or not Mr. Tuttle is acting in the interest of the Industry and the Code Authority and in accordance with the desires of the Code Authority.... It is not an action that should come from the Administration unless the Code Authority fails to act."

Later, Mr. Dame, in a letter to Mr. Tuttle, dated October 4, 1934, also warned him of price filing activities. He said:

> ".... It is apparent from many letters and conversations that I have received and had with members of the Mayonnaise Industry that they are of the opinion that the Code of Fair Competition for the Mayonnaise Industry was primarily intended to fix prices and guarantee a profit.... The question of price manipulation is one that you and the Code Authority should stay away from as much as possible. I know that it is difficult to do so, but that is the situation, and you must face it sooner or later or you will find yourself in a hole which it will be difficult to get out of...." (*)

The administration members of the code authorities were utilized in some instances in an effort to supervise and correct alleged price fixing activities carried on in conjunction with price filing plans. Thus on July 3, 1934, Mr. J. F. Lynch, Assistant Deputy wrote to Mr. Shepard Barnes, Administration Member of the Floor and Wall Clay Tile Code Authority, saying that the Research and Planning Division,

> "....entertains some fears that the price of tile is being raised, under the open price filing

---

(*) Correspondence referred to in preceding paragraphs contained in NRA files, mayonnaise industry.

system, to a point which will prevent....increase in volume of sales."

He stated that it had been suggested that certain changes be made in the Code in order to prevent too fast an increase in prices. Among these was the changing of the open price plan to conform with the provisions of Office Memorandum No. 228, He asked the administration member to sound out the code authority on the matter and also to submit his own opinions on the question. The record does not show any subsequent action on the case.(*)

Mr. R. W. Morrell, Administration Member of the Code Authority for the Scientific Apparatus Industry, on February 19, 1935, wrote to Mr. Alfred Hand, Assistant Deputy Administrator of the code concerning another instance of alleged attempted price fixing which he had sought to discourage. Mr. Morrell stated that shortly before he wrote, a meeting of the industry was held. Describing this meeting, his letter reads in part:

"....There was a long discussion on a proposed agreement not to file prices below a fixed schedule. I had to advise them that NRA policy is opposed to price fixing and that NRA could not sanction or recognize any fixing of prices by their Institute, so far as Code provisions might be concerned. Also that formal action by their Institute of this nature might be illegal. However, the general sentiment was in favor of an informal agreement along these lines, as their only salvation in eliminating the price-cutting which seems to have disorganized this Section, and they did not consider that such action would involve any violation of the Code. It appeared to me that any such action that they might take in their Institute would not amount to anything as it would not be adhered to, and that the situation would work itself out, perhaps by a request for declaration of emergency, if conditions warrant it, and perhaps accompanied by the establishment of cost accounting system if policy permits...."(**)

A number of other instances of supervisory action by NRA to offset price fixing activities should also be noted. In the crushed stone industry, the Northwest Construction Co. lost a bid because

---

(*) Letter in NRA files, wall clay tile industry.

(**) Letter in NRA files, scientific apparatus industry.

they were informed by the district committee that they must figure the cost of materials at the lowest price which was $1.50 per yd. Another contractor, who had bid at $1.00 per yd., received the award. The Northwest Construction Co.'s original bid had been at 90¢ a yard. As a result they wished the contract readvertised. The Legal Division ruled the district committee out of order in advising the Northwest Construction Co. of the requirement that they bid at $1.50 a yd., and that the company who received the bid could not be cited for violation.(*)

A memorandum from the Legal Division to the deputy in charge of the canvas goods code, dated December 24, 1934, stated reasons for staying the price filing and certain other provisions in the code. One of the reasons was that a public hearing had developed substantial evidence that price-fixing had taken place under the guise of price filing. (**)

Subsequently the price filing provisions of this code were stayed, in accordance with this recommendation.

Investigation of the alleged efforts of the Regional Code Authority of the Wholesale Confectioners Trade to arrive at a price-fixing agreement caused NRA to conduct an investigation of these activities. Price filing had played an important role in this effort to fix prices. The entire matter was summarized in a lengthy memorandum to the National Industrial Recovery Board from Mr. Edward K. Warren, Regional NRA Director in New York City, dated May 14, 1935, concerning charges against the Treasurer of the Wholesale Confectioners' Code Authority. This memorandum reads in part:

> ".....in or about June, July and August, 1934, respondent accepted blank forms of price lists which had not been filled in with prices but which had been signed by members of the Industry, and also accepted authorization from such members of the Industry to insert prices in such price form, such prices to be those which he thought should be inserted therein in order that the filed prices of all members of the Industry in the New York trading area would be identical or essentially the same....respondent neglected to file or treat as filed, ...twenty price lists deposited with him pursuant to the provisions of the code.... respondent told members of the industry what prices and discounts would be acceptable to the Code Autho-

---

(*) Letter in NRA files, crushed stone industry.

(**) Letter in NRA files, canvas goods industry.

> rity.... urged members of the Industry to file uniform prices and discounts which result in prices approximately 30% above cost of the products and considerably above the total cost of doing business. The respondent indicated that the Code Authority would not accept filing of lower prices."

Mr. Warren's memorandum continues by stating that Mr. Weber refused to

> "treat as filed one or more price lists tendered to him, basing his refusal on the ground that price lists could not be filed and made effective which contained prices below the standard prices sponsored by the respondent, which prices were considerably above cost...."(*)

The New York regional office recommended the ousting of the head of the regional code authority but the Supreme Court decision on May 27, 1935, prevented the carrying out of this action.

(*) Memorandum in NRA files, wholesale confectionery industry.

The secretary of the Code Authority for the Macaroni Industry was warned by the deputy administrator against too extensive recommendations for price increases and the maintenance of filed prices at a profitable level. These warnings resulted in no special corrective measures, although the industry was subjected to some brief investigations by the Department of Justice because of complaints of price fixing activities. (*)

The activities of the Code Authority for the fire extinguishing Appliance Industry in issuing bulletins containing regulations not in accord with the code provisions and in attempting to fix prices were criticized by the NRA and were subjected to investigation by the Federal Trade Commission. The review of the code authority bulletins and the actions concerning them are given in detail in another section of this report. (**) The establishment of trade factors and mandatory price differentials to be used in connection with them, and the establishment of lowest reasonable costs by means of a cost accounting system not approved by the NRA were among the activities to which objection was raised. Most of these matters had been informally approved by the deputy adminstrator who had been in charge of the code when it was first approved. The Federal Trade Commission investigation of this industry resulted in a cease and desist order being accepted by the industry in November, 1935.

An NRA investigation of alleged price-fixing in the candy manufacturing industry was conducted in the spring of 1935. The charges centered around the activities of the chairman of the code authority, and others connected with the national confectioners' association, in attempting to restore the waiting period which had been stayed by NRA action at the time the code was approved. The methods employed in certain areas in which these activities occurred were the holding of meetings of industry members at which a price level was agreed upon, with members obligated to file such prices with the regional officers of the code authority before they were forwarded to Dun and Bradstreet, which was serving as a confidential agent for the code authority. These activities were alleged to have occurred during December, 1934, and necessary action to remove the chairman from his official capacity was taken early in 1935. (***)

The chairman of the Code Authority of the Builders' Supply Trade was charged with issuing bulletins to the industry without approval of the NRA with publishing suggested price lists in metropolitan New York trading area and with issuing a cost schedule without NRA approval. Members of the trade

---

(*) See letter from Mr. Walter White to Mr. G. G. Hoskins, April 17, 1934, in NRA files, macaroni industry.

(**) Pages 251 & 292-294, above.

(***) See Transcript of the Hearing on the Code for the Candy Manufacturing Industry, January 19, 1935, in NRA files; also memorandum from C. W. Dunning, Deputy Administrator to D. M. Nelson, Code Administration Director, dated January 28, 1935, in NRA files, candy manufacturing industry; also minutes of the meeting of the Code Authority for this industry, held February 22-24, 1935, in NRA files, Candy Manufacturing Industry.

complained that he completely dominated the Industry. A memorandum from the assistant deputy administrator, dated March 11, 1935, summarizes the charges and describes the investigation of his activities, but does not include the outcome.(*)

2. Suspension of Price Filing Plan.

The Legal Division of the NRA objected to the powers assumed by the code authorities for various divisions of the paper and pulp industry in suspending price filing provisions without special authorization. These suspensions of price filing for particular areas and products for varying periods of time, had been made during downward spirals of prices in an effort to deter price cuts and stabilize prices. These actions by the Legal Division amounted to condemnation of the entire price filing plans of some of these industries as being illegal because of the assumption of quasi-legislative and quai-judicial powers not within the scope of the code. One opinion by Mr. Jack Scott of the Legal Division held that no open price plan of any kind could be put into effect without approval of the NRA, despite the enabling language in the code.

This opinion was transmitted to the deputy in charge of a Paper Division, Mr. W. J. Brown, in connection with the plan of the folding paper box industry and was severely criticized by Mr. Brown in a memorandum to Division Administrator Battley on January 4, 1935. (**)

This and other legal criticisms of the price filing plans in the paper codes effectively prevented NRA enforcement activities in connection with these plans, but did not prevent voluntary compliance on the part of members.

The disapproval of the mandatory customer classification set up by the envelope manufacturing industry and the revoking of that bulletin led to the voluntary suspension of price filing in that Industry in April, 1935. (***)

An illustration of unauthorized suspension of the price filing plan, as it applied to one industry product is contained in a letter dated January 9, 1935, from Deputy Administrator Janssen to the Code Authority for the Crushed Stone Industry. The letter (****) stated that the action of a district committee in exempting railroad ballast from the price filing requirements was not justified; the letter stated that, once a district committee

---

(*) Memorandum to F. A. Hecht, Deputy Administrator, from A. C. Cook, Assistant Deputy Administrator, March 11, 1935. In NRA files, builders supply trade.

(**) In NRA files, paper and pulp industry.

(***) See above pages 248-249.

(****) Quoted in "The Administration of the Code for the Crushed Stone, Sand, Gravel and Slag Industry," by the Code Administration Study Section of the Research and Planning Division, in NRA files.

had elected to make price filing effective, only code amendment could reverse this process.

3. Irregular Allegations of Violation.

On December 21, 1934, the Code Authority for the Scientific Apparatus Industry filed a complaint against the Abernathy Furniture Company and the Swenson Construction Company. The charge was failure to file prices and bidding below the lowest filed price on a P.W.A. contract by the former company, to which the latter concern had sublet a contract for laboratory furniture. It was commented on this case by the assistant deputy that no violation had occurred since no notice to file prices had been sent by the manager of the code authority to the respondent prior to the filing of bids. (*)

4. Supervision of Application of Executive Order No. 6767, and Administrative Order X-48.

Considerable correction and guidance was given to code authorities in connection with Executive Order No. 6767 and Administrative Order X-48. (**) Only one example of this will be given here.

On July 1, 1934, the code authority of the plumbing fixtures industry filed a notice to members, stating that Executive Order X-48, requiring that the Government be granted as favorable terms for like quantities as any other purchaser, did not apply to that industry, since the code prohibited selling direct to consumers. The Legal Division of the NRA ruled that X-48 and 6767 did apply and the code authority in October, 1934, rescinded its original order. (***)

5. Supervision Connected with Cost Formulae

The pricing formula designated by the code authority of the Marking Devices Industry was ordered withdrawn by the NRA since there was no sanction in the code for such a formula. A request for withdrawal of the uniform price lists filed pursuant to the formula was made in May, 1934. (****)

6. Availability of Filings to Members

The secretary of the Code Authority for the Cast Iron Soil Pipe Industry was rebuked on a number of occasions by the deputy for issuing bulletins and other instructions to the industry contrary to the provisions of the code. In one instance he was ordered to retract a letter stating that price lists filed with him were available only to members of the cast iron soil pipe association, and to disseminate such prices to all members of the industry. (*****)

(*) Letter in NRA files, scientific apparatus industry.

(**) For a more complete consideration of these two Orders, see below, pp. 477-483.

(***) NRA files, plumbing fixtures industry.

(****) NRA files, marking devices industry.

(*****) On this see MacKenzie, J. W., "Preliminary Report on the Administration of Trade Practices by Code Authorities", Code Administration Studies Section, December, 1935, pages 30-33, NRA files.

7. Classification of Customers.

The practice of the Asphalt Saingle and Roofing Code Authority of holding meetings to consider the classifications of customers used in filing prices, was objected to by the Administration. The code authority was ordered to abolish this practice of "mis-classification meetings", as they were called. (*)

8. Rejection of Filings.

The activities of the Code Authority for the Gas Appliances Industry were subjected to NRA investigation late in 1934, and a report on these activities was prepared by the Deputy for the consideration of the National Industrial Recovery Board. These alleged activities included efforts to fix prices, to reject filed prices where not acceptable to the code authority, and to coerce non-members (of the industry) to conform to regulations not included in the code. (**)

9. Miscellaneous Items.

The Code Authority of the Vitrified Clay Sewer Pipe Industry informed its members that they would be in violation of the price filing provisions of the code if they gave prior information of price changes to their customers. The NRA objected to this interpretation and asked that it be withdrawn. (***)

In a bulletin issued on October 18, 1934 the Code Authority for the Crushed Stone Industry set forth a number of resolutions in the nature of explanations or interpretations.

These stated, among other things, that the code was to be interpreted to mean that it was unlawful to make a sale at less than prime plant cost plus 10 per cent, that the code provision permitting filing of prices less than prime cost plus 10 per cent to meet competition meant to meet a competition for which a price was filed; that in the absence of definite rulings on the matter by the district committees, certain rules concerning delivery terms were to be observed; and that "any producer not having filed prices at least five days prior to the time of any letting thereto, cannot subsequently file prices to meet the filed prices of any other producer which were not properly applicable to that letting". (****)

(*) See Appendix A for further details.

(**) See "Price Filing in the Gas Appliances Industry" Appendix "C" of "A Limited Survey of Price Filing in NRA Codes", Preliminary Report of the Price Filing Unit of the Division of Review of the NRA, November, 1935. NRA files

(***) NRA files, vitrified clay sewer pipe industry.

(****) NRA files, crushed stone industry.

John E. Skilling, Legal Advisor, in a memorandum to Assistant Deputy Administrator Dickerman, dated November 24, 1934, stated that the effect of each of the resolutions was to amend the code. Deputy Administrator Janssen, on December 5, 1934, wrote to the code authority and submitted the legal adviser's criticisms, but stated that in his opinion the first two resolutions did not exceed the power given to the code authority. The code authority replied by stating that the third resolution had been amended and the fourth one rescinded. Speaking of this the writer of the Research and Planning Code Administration Study said:

> "With further reference to the letter of the Deputy Administrator, in which he concurred in the Code Authority's resolution No.1 and No. 2, the investigator finds no record of approval of these resolutions by the various NRA divisions and Advisory Boards, nor of any official action thereon. It is evident, however, from the reply of the Code Authority that it considered its resolutions No. 1 and 2 had been concurred it, since it expressed satisfaction at this result. It should be noted here that Resolution No. 1 presumed that the Codal restriction against sales below prime plant cost plus 10 per cent is in effect, whereas as a matter of fact, the standard uniform accounting and costing system, on the basis of which that allowable cost is to be computed (Article VII, Section 2 d) had not been approved by the NRA as required under Article II, Section 2, and still remains unapproved....." (*)

Administrative Order No. 109-46, dated October 15, 1934 exercised further supervision over this industry. It read:

> "Whereas, on September 25, 1934, the District Committee of North Carolina for the Crushed Stone, Sand and Gravel and Slag Industries, adopted the following resolution: 'Be it resolved, where quotations are filed by a plant that is not set up, the producer must designate the exact location of the plant and the property on which it is to be located and the number of miles said plant is located from some specific part of the project for which prices are filed.'
>
> "And whereas the Deputy Administrator has reported and it appears to the satisfaction of the National Industrial Recovery Board, that the said resolutions will result in hardships to such members of the Industries, and that justice requires that it be disapproved:
>
> "Now, therefore, pursuant to the authority vested in the National Industrial Recovery Board, it is hereby ordered that the said resolutions be and they are hereby disapproved."

In summary, the foregoing instances of cases involving NRA supervision may be analyzed as follows:

Among the items involved in the various cases were: the use of a standard price filing form, price fixing activities associated with price filing, the use of cost formulae, customer classification, the rejection of certain price filings, the scope of membership subject to the code, the avail-

---

(*) Quoted in "The Administration of the code for the Crushed Stone, Sand, Gravel, and Slag Industry", by Sterling March, Code Administration Study Section of the Research and Planning Division, page 99.

ability of price filings to all members of industry, failure of certain members to file prices, failure to adhere to filed prices, failure to file prices on certain products, establishment of uniform credit terms, the application of Executive Order No. 6767 permitting sales to governmental agencies at less than filed prices, and substitution of filing of elements of cost for the filing of prices.

The problems involving the above matters reached the attention of the Administration through a number of channels. Among these were (1) submission of question to the NRA by the code authority, (either by virtue of a code requirement or because the code authority wished to avoid unauthorized action; (2) through raising of the issue as a result of a ruling or interpretation of the code authority, as evidenced by code authority minutes or bulletins (sometimes the matter was brought up when the deputy saw such a bulletin; sometimes a member of one of the advisory boards or divisions raised the issue); (3) a complaint alleging violation of a code requirement or a code authority ruling might have been filed with an NRA compliance agency by the code authority; (4) a customer or member of the industry might have compained against some action or ruling of the code authority; or (5) the administration member of the code authority might have brought to the attention of the Administration some questionable action by the code authority.

As the foregoing indicates, sometimes Administrative supervision took place before a contemplated action or ruling did not come to light until it ha effect. Sometimes the action or ruling did not come to light until it had been put into force and some objection to it was voiced. It is impossible to determine what proportion of the cases involved action beforehand, and what proportion involved action after the fact.

As to methods of handling, many cases were handled by correspondence between the Administration and the code authority, or between the Administration and the member of the industry or customer of the industry affected. In some instances, special investigators or the administration member were asked to look into the matter. Public hearings resulted from the efforts to adjust some of the problems requiring supervision. Conferences were held with members of the advisory boards and divisions to ascertain appropriate action in other cases.

Because of the incompleteness of the records it is most difficult to state very much of a definite nature concerning the efficacy of Administrative supervisory activities. It is clear that in some instances warnings against more or less outright price fixing activities almost completely disregarded. In other cases, advice to code authorities that certain activities were outside of their proper field of action appears to have been effective. Again any quantitative measure is virtually impossible.

Supplementing the aspects of administrative supervision presented in the foregoing section, the section following will deal with the work to the Administration and the code authorities in effecting compliance with the open price provisions.

SECTION B - COMPLIANCE AND LITIGATION ACTIVITIES

I. COMPLIANCE ACTIVITIES BY CODE AUTHORITIES AND THE N.R.A.

Introduction

In securing compliance with the price filing provisions of codes, as with other trade practice provisions, much of the responsibility and authority was delegated by the Administration to the code authorities, their trade practice complaints committees and other representatives. However, the Administration had its own Compliance Division, with Washington and field headquarters: and the Government Contracts Branch also worked to bring about conformity with trade practice provisions of codes. The work of these compliance agencies will be considered in this section.

A. Code Authority Compliance Activities

"The Manual for the Adjustment of Complaints by State Directors and Code Authorities" laid down the following proportion as a basic guide for the division between code authorities and the Administration of responsibility for obtaining compliance:

> "....The responsibility for insuring that codes are administered and that the public is protected lies with the Administrator; but the aim of N.R.A. is to give to Industry, through its code authorities, the widest possible range of self-government, subject to the ultimate responsibility of the Administrator..."(*)

In order to become officially authorized to handle trade practice complaints, code authorities were required to submit for the approval of the Administration their plans for procedure in such cases, modeled upon the outlines of methods for handling complaints contained in the Bulletin #7 previously referred to.

1. Code Authority Methods For Handling Complaints

Little information is available concerning the details of the procedure actually followed by compliance agencies of code authorities in the handling of complaints. However, charges were made that some code authorities failed to follow the prescribed methods of obtaining compliance. It is impossible to state definitely the extent to which such charges were justified, and, if justified, whether such instances were typical or exceptional. One case of alleged mal-administration will be mentioned to illustrate the point. It concerns the activities of the Mayonnaise Code Authority. On September 6, 1934, Mr. Nathan Raff, President of the United Food Products Company of Brooklyn, N. Y., addressed a letter to General Hugh S. Johnson stating:

> "....It would seem to us that after the filing of our advance schedule with the local Code Authority, the gentlemen who are administering and managing the business of this Authority would recognize that we have shown a spirit of co-

(*) NRA Bulletin #7, dated January 22, 1934, page 3, NRA files

operation which should be welcomed and appreciated, but since August 20, (the effective date of the schedule filed by Mr. Raff containing the increase in prices) these gentlemen, especially Mr. Tuttle, the managing agent of the Code Authority, gave us nothing but continuous annoyance. They called us a number of times telling us that we must again raise our prices in order to conform with price schedules filed by other manufacturers. We finally arranged for a conference with Mr. Tuttle at 10:30 A. M. on Friday, August 31. The writer and his business associates went down to see Mr. Tuttle at the appointed hour. Mr. Tuttle again told us that we must raise our prices to the level of the schedules filed by other manufacturers. All of our arguments that it would be sheer folly for us to announce another price rise now was of no avail to Mr. Tuttle, or facts and figures that our present prices are not below cost and do not, therefore, constitute an act of unfair competition meant nothing to him .....then Mr. Tuttle.....called in two men from the adjoining room, whose names he did not give us and announced that this was a meeting of the Complaints Committee of the local Authority. He started to read the riot act to us; he threatened to have us indicted and convicted of all sorts of crimes..... After Mr. Tuttle got through with all of his cajoling, intimidations and threats, we again announced that we would not raise our prices now but would only do so when conditions would so warrant....."

On September 10, Mr. Tuttle wrote to Mr. Lester S. Dame, Assistant Deputy Administrator concerning this matter:

".....Our Code contains the provision prohibiting destructive price cutting which includes, without limitation, sales below cost. In view of the fact that the Code Authority had determined the lowest reasonable cost, it is obvious that if the Code Authority can sustain its figures, any sales below these costs constitute destructive price cutting. We are confident that expert examination would sustain these lowest costs.

"The Trade Practice Complaints Committee requested the presence of the officials of the Union Food Products Co., as outlined in the letter. The Trade Practice Complaints Committee said nothing about the price level of other manufacturers, but stated that complaint has been made to the effect that Union Food Products filed prices representing destructive price cutting prohibited by the Mayonnaise Code.

"Neither the Managing Agent or any other member of the Trade Practice Complaints Committee read the riot act to the officials of the Union Food Products Co., and the only reference to penalties of the Act were made in response to the suggestion advanced by an official of the Union Food Products to the effect that they would continue to do so as they pleased and that the NIRA could not or would not be enforced,..."

A tendency for code authorities to attempt to anticipate their official authorization to act "in the first instance" is evidenced in the following correspondence from Mr. G. G. Hoskins, Chairman of the Code Authority for the Macaroni Industry. It also indicates the methods used by one code authority to achieve mobility of their adjustment agency:

"We have a letter from Division Administrator Riley stating that our duly elected members of the Code Authority have been recognized as such. Can we assume that their recognition as the highest industrial adjustment agency as per NRA Bulletin #7 will be forthcoming soon?

"Proceeding under the authority given me in your recent letter we are assuming that they can handle complaints in the first instance but sooner or later we are going to come against a state compliance director who does not recognize us as being the highest adjustment agency in our Industry. Incidentally, our by-laws call for three members of the Code Authority to sit as such committee. This provision was made so that by traveling to various parts of the country I could pull in two other members of the Code Authority without requiring a meeting of the whole Code Authority...."(*)

Certain Code Authorities, by virtue of particular code provisions enabling them to do so, enforced compliance by means of so-called "liquidated damage" agreements. While there was considerable variation between the codes as to the exact procedure, the general nature of these plans was the same; members guilty of violation of trade practice provisions were assessed a fine by the code authority or one of its agents.

Discussing the operation of liquidated damage provisions, Mr. Walter Mangum, Acting Deputy Administrator, in a memorandum to Acting Division Administrator Prentiss L. Coonley, November 27, 1934, said:

"....There are various procedures set up for handling the cases, but that adopted by the Reinforcing Materials Fabricating Industry would appear to be extremely fair and impartial. These cases are presented to the Code Authority in the abstract and impersonally. The name is not divulged even to the members of the Code Authority. If a member of the Industry is found guilty, damages are then fixed. If he pays willingly, his name is never disclosed. Should he desire to appeal, a public hearing is then ordered and all the facts, including names, are disclosed. The Reinforcing Materials Fabricating Code Authority has handled four hundred ninety-eight (498) cases in nine (9) months. While some of them have been rather bitterly fought, in most instances the offending member has admitted guilt and paid the damages assessed. This Code Authority estimates that the average case is completed and the money paid within three months from the time it is first brought to their notice. This Industry has now collected as damages a sum sufficient to support its Code Authority operations for the next six months."(**)

(*) Letter to Mr. Walter White, Deputy Administrator, NRA files April 12, 1934

(**) Copy of memorandum appended to "The Use of Liquidated Damage Provisions in Industry Agreements", NRA, Enforcement Studies Section.

Concerning the effectiveness of this type of provision as an aid to enforcement, this memorandum continues:

> "....Generally speaking it is found that these provisions are most applicable to the enforcement of trade practice article, and are not usually brought to bear in cases of labor violations. A most considerable measure of success has been obtained in those codes where the procedure has been adopted and the provisions made effective. I feel that the liquidated damage provisions could be made most effective in a number of codes in the (textile) Division .... The provisions are working better in industries which have strong trade associations or institutes, rather than in those which are not closely knitted together....Every effort should be made to have industries adopt these provisions. Their value is in forcing compliance in small cases where publicity might be both harmful and unfair, and frequently many cases could be handled in this way where the offense is not such that the conviction could be secured in court...."

Some further indications of code authority compliance procedure may be found in the digest of 109 price filing cases (involving the 57 codes treated by the Price Filing Unit) made by the Compliance Division and sent to the Trade Practice Studies Section. These cases were those which were referred to the National Compliance Council and (after January, 1935) to certain of the regional offices, after state offices and code authorities had been unsuccessful in bringing about conformity with code provisions. Of the 109 cases digested, 75 were handled originally by the code authorities, 28 by the state offices and 6 by the Government Contracts Branch. 74 of this total number were handled by correspondence, 33 by interview with the respondents and 2 by interview with competitors. Although this breakdown is a description of method of handling by the three compliance agencies, since the preponderance of cases were handled by code authorities in the first instance and the greatest number were handled by correspondence, it is evident that the majority of cases handled by code authorities must have been handled by correspondence.

It is interesting and perhapd significant to note that 89 of the above complaints were originally brought by code authorities, 18 by competitors, 1 by a trade association and 1 by an employee.

No adequate quantitative data are available as to the extent of the handling of trade practice complaints in general by the code authorities, or the proportion which price filing complaints made up of the total number of complaints dealt with. Figures to be presented below in connection with NRA compliance work indicate that in codes with price filing provisions, violations of these provisions often made up a considerable proportion of the total violations which were referred to NRA for action.

2. Code Authority Compliance Difficulties

Difficulties in securing compliance were inherent in the nature of certain open price plans, such as those containing provisions requiring

price filing by a great number of small units of the industry or filing of prices on a great number of non-standard items.

Of the difficulties which were experienced by Code Authorities in their compliance activities, three major problems will be treated here:

(a) Failure of NRA to actively, persistently and successfully prosecute violators;

(b) Inadequate code authority financing to carry on compliance work; and

(c) Reluctance of industry members to report violations.

The most frequently repeated complaint made in explanation of the failure to secure compliance with price filing provisions is that violators of open price provisions were not actively, persistently and successfully prosecuted. It is repeatedly pointed out in the code histories and elsewhere that failure to secure convictions of violators sooner or later broke down compliance with price filing provisions. The following is a typical expression concerning this situation:

> "...There was one outstanding case of violation by a member who defied all provisions of the Code...This case had a very serious effect on the Industry and was quite a problem to the Code Authority as it developed early in its administration, and although vigorously pushed for settlement, no prosecution or adjustment was made during the life of the code. Failure to enforce compliance in this one outstanding case had a very discouraging effect on the Code Authority and prompted the question as to whether or not the provisions of the Code could be enforced..."(*)

In certain codes, the lack of adequate code authority financing played a part in the failure to secure compliance. Thus, a memorandum dated December 24,1934, signed by Prentiss L. Coonley, Division Administrator, stated that one of the reasons for the staying of the price filing and certain other trade practice provisions of the Code for the Canvas Goods Industry was the realization that the Industry did not have the funds necessary to secure compliance with highly restrictive trade practice provisions.(**)

In some instances the hesitancy of members of the industry to report code violations by their competitors made the securing of compliance difficult. An instance of this type of difficulty was experienced in

---

(*) Code History for the Ladder Manufacturing Industry, page 38-39. For other illustrations of this point, see Code Histories for the Retail Monument Industry, page 9; for the Plumbing Fixtures Industry, page 44; for the Mayonnaise Industry, page 230; for the Macaroni Industry, pages 40-44 and 93; for the Cement Industry, page 52; and for the Folding Paper Box Industry, page 81.

(**) Code History for the Ladder Manufacturing Industry, pages 38-9.

the Candy Industry. The writer of the code history for the industry says:

> ".....The administration of the trade practice provisions was hampered by extreme reluctance on the part of members of the Industry to file complaints against competitors who violated trade practice provisions. This brought about a situation wherein many members sat tight with files containing evidence of violations which they planned to release only in self-defense against complaints filed against them...."(*)

As has been noted above, the Administration laid down in Bulletin No. 7, and its subsequent amendments, rules for the guidance of compliance agencies of code authorities; and the code authorities were required to submit for Administrative approval their plans for handling trade practice complaints; but once such plans were approved, NRA supervision over the power delegated to code authorities to bring about compliance was to a considerable extent haphazard, indirect and incidental. A limited amount of direct supervision was effected through the work of administration members of code authorities, and of the trade practice compliance officers and adjusters attached to State NRA offices. According to a statement made in an interview by Mr. Howard C. Dunn, formerly Trade Practice Compliance Officer for the State of Illinois, state NRA offices did considerable work educating the members of trade practice complaints committees as to their duties and responsibilities. Such groups often did not know how to proceed, Mr. Dunn stated, and they were guided, checked and assisted in their work by the State offices. Some check was made through checking rules and pronouncements in code authority bulletins, but such checking was by no means unviersal. Complaints, such as the one cited above from Mr. Raff of the Mayonnaise Industry,(**) sometimes led to limited investigation of compliance procedures. Much of the NRA supervision over code authority compliance activity was brought about by such indirect means.

The nature and extent of NRA's own compliance efforts with respect to price filing will be outlined in the section following:

B. <u>NRA Compliance Activity</u>.

1. Volume and Disposition of Cases Handled by State Offices.

On an accompanying page is shown a table which indicates the volume of compliance activity of the NRA State compliance offices relative to price filing provisions in the codes, and the proportion which this activity represented of these Offices' total compliance work. The great majority of these cases, it is indicated, were referred to the NRA agencies by the code authorities after prior attempts to adjust the cases had failed. The following points are offered as the high lights of the table:

(*) Code History for the Candy Industry page 48

(**) Supra,,P. 430.

Of 6,115 individuals and firms charged with violating trade practice provisions in the 57 codes comprising the open price sample, 46 per cent were alleged to have failed to file prices. Complaints of failure to file prices outnumbered complaints of failure to adhere to prices filed in these codes by approximately 7 to 1.

In many instances a case against a single individual or firm involved several types of violations. The data for the 57 codes further show that the 6,115 cases noted above violationa total of 7,142 trade practice violations. Of this total number of violations charged, 3,264 or 45 per cent involved either failure to file or failure to adhere to filed prices.

Comparable figures for the entire number of codes for which figures were compiled (*) show that alleged price filing violations made up 19 per cent of all cases, and approximately the same proportion of all the violations charged.

It is thus evident that from a compliance standpoint the price filing provisions were a source of a large amount of difficulty. The office of the field division of the NRA advises that a survey of NRA State office complaints which have been made since the Schechter decision, indicates that failure to file prices accounted for more of the alleged violations than any other one type of trade practice provision. Failure to file statistics accounted for the next largest number.

The majority of cases in the Open Price Sample Codes involved members of 12 codes. These codes are: Baking, Builders' Supplies' Canvas Goods, Crushed Stone, Electrical Manufacturing, Macaroni, Plumbing Fixtures, Retail Monument, Retail Rubber Tire and Battery, Set Up Paper Box, Structural Clay Products, Wholesale Confectionery. These Industries each contain a large number of units (though not necessarily a large number of employees or large dollar sales volume).

These 12 codes account for 86% of the total number of cases involving the 57 codes in the open price sample. Likewise the 12 codes listed account for 87% of the total number of violations of trade practice provisions in the codes in the sample. To look at it in another way, these 12 codes account for 36% of all complaints alleging failure to file prices in all (not just the sample of 57) codes. The 12 account for 56% of all complaints alleging failure to adhere to filed prices in all codes. Since over 440 codes contained open price provisions, and since 12 of these accounted for over one third of all alleged violations of open price provisions investigated by NRA State offices, it is clear that compliance difficulties with price filing for which NRA aid was involved tended to cluster in a small percentage of the total number of open price codes.

(*) See footnote to the table cited above.

METHOD OF DISPOSITION OF CASES, ALL CODES(*)

Method of Disposition	Total Violations		Alleged failure to file prices		Alleged failure to adhere to filed prices	
	Number of Violations	Percentage of total	Number of Violations	Percentage of total	Number of Violations	Percentage of total
Adjusted	21,961	53.3%	4060	56.5%	392	56.9%
No Violation	9,205	22.3%	1709	23.7%	135	19.6%
Dropped	6,144	14.8%	863	12.1%	101	14.6%
Pending	3,887	9.6%	550	7.7%	60	8.9%
TOTAL	41,197	100.0%	7182	100.0%	688	100.0%

From this tabulation it will be seen that there were no significant differences in the proportion of the price filing and other cases disposed of by the different methods. All three of the items listed, total alleged violations, alleged violations involving failure to file prices and allegations of failure to adhere to filed prices, had approximately the same percentage of their respective totals handled in each of the four methods. Over half of the alleged violations docketed under each of the three categories were adjusted; about one fifth did not involve actual violation; about one seventh of the cases dropped; and somewhat less than one tenth were pending when the Supreme Court invalidated the NRA.

To summarize briefly, alleged failure to file prices was the most frequent of all trade practice complaints investigated by the NRA State offices. A very small proportion of the open price codes account for a substantial number of the alleged violations. Somewhat over half of the complaints were adjusted and about one fifth of the complaints were found to be without basis.

2. Difficulty of State Offices with Code Authority Procedures and With Changing Code Provisions.

Apparently considerable difficulty was experienced by the Compliance Division because some code authorities habitually filed complaints of violations without having previously investigated to determine the soundness of the accusations. In an attempt to reduce the number of complaints not substantiated, the Compliance Division, on August 11, 1934, issued Field Letter No. 148, reading as follows:

> "4. COMPLAINTS FILED BY CODE AUTHORITIES. It appears that Code Authorities are sending lists of alleged violators of their code to Field Offices where subsequent investigation reveals either that the respondents are no longer in business, or are not properly classified under such code. In the future, you will not investigate lists

(*) See Attached table for detailed definitions of methods of disposition.

> of complaints of failure to file statistics, contracts, prices, etc., unless a certificate is attached to such complaint that the respondent was in business as of some recent date, and that a registered letter was sent to him notifying him of his code violation."

This policy was modified somewhat by Field Letter No. 176, dated November 3, 1934. This stated:

> "Section 3. Item 4 of Field Letter No. 148 instructs you to take no action on complaints filed by Code Authorities alleging failure to file price, statistics, etc., unless they are accompanied by a certificate that the respondent was in business as of some recent date and that a registered letter was sent him notifying him of his code obligations.
>
> If the action taken by your office will consist merely in sending the respondent a letter informing him that he will be deemed to be in violation unless the necessary information is filed with the Code Authority (particularly when a long list of alleged violators is filed by you) it will not be necessary to require a previous notice by registered mail. If, however, a complaint is accepted for formal action, with the possibility that it may be later referred to Washington, the file should include a return receipt for a registered letter."

Difficulty of the field offices in keeping up with stays of code provisions is evidenced in the following excerpt from Field Letter No. 198, dated February 9, 1935:

> 6. Canvas Goods Industry. The Apparel Section informs us that offices have docketed complaints under provisions of the Canvas Goods Code which have been stayed. This stay went into effect on January 14th and covers the following provisions of Article VII, B; Section 1 (a); Section 1 (b); Section 2; Section 3 (a) and (b); Section 4; Section 5; Section 6; Section 7; Section 8; Section 9; and Section 10.
>
> (Sections 4 and 5 provide for the price filing plan and for adherence to filed prices.)

3. National and Regional NRA Compliance Procedure.

When a complaint seemed impossible of adjustment by the code authority enforcement agency and the NRA State office, it was generally referred to the Compliance Council of NRA, or after January, 1935, to the NRA regional office. Information concerning Compliance Division policy and procedure with respect to cases of alleged violations of the price filing provision was obtained in an interview with Mr. J.J. Reinstein, formerly Acting Chief of the Co-ordinating Branch of the Compliance Division. The first step was to notify the respondent in the case that the complaint had been referred to the NRA Compliance Council (or regional office) and that a hearing would be held on a designated date. The respondent was entitled to appear in person at such hearing but few appeared, generally due to the fact that they were so far removed from Washington or

VIOLATIONS AND ALLEGED VIOLATIONS OF OPEN PRICE FILING PROVISIONS INVESTIGATED BY THE N.R.A. STATE OFFICES a/
(October 19, 1933 - May 27, 1935)

Source: Statistical Section, Field Division, NRA. March 3, 1936

	Total number of all trade practice cases handled					Total no. of alleged violations of trade practice provisions.					Failure to file prices actual or alleged.					Failure to adhere to filed prices actual or alleged.				
	Total (1)	Adjusted (2)	No Violation (3)	Dropped (4)	Pending (5)	Total (1)	Adj. (2)	N.V. (3)	Drop. (4)	Pend. (5)	Total (1)	Adj. (2)	N.V. (3)	Drop. (4)	Pend. (5)	Total (1)	Adj. (2)	N.V. (3)	Drop. (4)	Pend. (5)
Total all codes b/	36,425	19,674	8,094	5,295	3,377	41,197	21961	9205	6144	3887	7182	4060	1709	863	550	688	392	135	101	60
Total 57 codes c/	6,115	3,619	1,401	581	514	7142	4211	1668	677	586	2869	1761	699	251	158	415	275	50	60	30
Total 45 codes d/	801	471	179	70	84	909	524	209	80	96	217	128	49	17	23	25	12	4	3	6
Total 12 codes e/	5,311	3,148	1,222	511	430	6233	3687	1459	597	490	2652	1633	650	234	135	390	263	46	57	24
Baking	1,096	748	106	127	115	1305	922	119	138	126	663	502	35	79	47	144	99	24	13	8
Builders Supplies	525	303	97	62	63	563	323	103	71	66	275	165	36	25	49	93	64	7	15	7
Canvas Goods	395	219	118	58	—	423	228	127	68	—	325	186	98	41	—	1	—	—	1	—
Crushed Stone, etc.	168	102	43	8	15	186	113	49	8	16	59	41	15	2	1	8	4	3	1	—
Electrical Mfg.	464	222	48	44	150	465	222	48	44	151	75	40	17	12	6	6	1	1	3	1
Macaroni	175	96	41	18	20	253	133	48	25	47	34	20	6	2	6	46	25	2	12	7
Plumbing Fixtures	135	85	36	11	3	154	99	40	12	3	36	24	9	3	—	1	—	1	—	—
Retail Monument	784	520	169	60	35	874	569	195	71	39	351	233	82	27	9	26	19	6	—	1
Retail Rubber Tire	770	364	369	29	8	856	418	395	34	9	536	230	296	5	5	59	48	1	10	—
Set Up Paper Box	332	158	117	54	3	424	160	190	70	4	25	2	1	21	1	1	—	—	1	—
Structural Clay Prod.	119	77	29	9	4	128	83	32	9	4	44	22	15	4	3	4	2	1	1	—
Wholesale Confectionery	348	254	49	31	14	602	417	113	47	25	229	168	40	13	8	1	1	—	—	—

a/ DEFINITIONS: Cases and Violations. The number of cases indicates the number of persons or firms charged with code violation. The number of violations indicates the number of code provisions allegedly violated. The number of violations is always equal to or greater than the number of cases since a given respondent (person or firm) may be charged with violating more than one code provision.
Adjusted Cases. Adjusted cases are those in which a violation ceased and (usually) a certificate of compliance was signed.
No Violation Cases. No violation cases are those in which the allegation of code violation was found, upon investigation, to be without basis in fact.
Dropped Cases. Dropped cases represent actual instances of violation which could not be adjusted but which were deemed unsuitable for further action. If the practice complained of ceased to be a code violation, because of a change in the code (e.g., price filing under the Canvas Goods Code), unadjusted violations were normally dropped. The majority of these cases, however, were dropped because they were unsuitable for litigation, sometimes because the violation was minor or of a technical nature, often because the respondent was small and only an unimportant factor in his industry.
Pending Cases. Pending cases consist of those pending on May 27, 1935, which had been investigated sufficiently to disclose the nature of the violation.

b/ Violation of trade practice provisions were docketed under 475 codes and supplements.

c/ This item gives the total for the 57 codes which made up the open price sample.

d/ This item gives the totals for the 45 codes in the open price sample for which less than 100 cases each were docketed.

e/ This item gives the totals for the 12 codes in the open price sample for which 100 cases or more each were docketed. The detail for each of these 12 codes is given immediately following the totals for the 12.

other hearing headquarters. In liew of such personal appearance, the respondent was entitled to transmit evidence denying the allegation of violation. Mr. Reinstein stated that price filing cases were regarded as "routine". The code authority would make a showing that the alleged violator was a member of the industry and that he had not filed prices. Removal of the respondent's Blue Eagle frequently followed. In most cases, Mr. Reinstein stated, no further action was taken, since the Litigation Division did not push such cases in court action(*)If the respondent filed prices at a later date, he was entitled to the return of his Blue Eagle.

4. The Government Contracts Division.

The Government Contracts Division of the NRA (earlier the Government Contracts Branch of the Compliance Division) also was an aid toward the enforcement of the trade practice provisions in certain codes. This Division, among other activities, attempted (1) to secure the cancellation of contracts between government agencies and code violators and (2) to bring about the withholding of new government contracts from such violators.

> ".... The case of Morrison Brothers is typical of such instances. They were the low bidders and were awarded a contract to remodel school buildings at Bethesda, Md. Before the job was started they were found to be in violation of the Contractor's Code, and the right to use the Blue Eagle was terminated by the Compliance Division. The Government Contracts Division, after investigation, recommended cancellation of the contract, but P.W.A., for reasons that seemed good and sufficient to them declined to follow the recommendation and permitted the performance of the contract. Without meaning to criticize the action of P.W.A., or to question the soundness of the reasons which prompted such action, it is submitted that the work of the Government Contracts Division was seriously hampered and its prestige and effectiveness considerably damaged thereby.
>
> "Despite its lack of power of cancellation of contracts and the lack of complete cooperation of Government Departments, there can be little doubt as to the value of the work of the Division in securing code compliance in many industries. In the case against the Baltimore Lumber Company(L-1407), it appeared that orders for government work constituted 70% of the defendant's business, and because of this fact the defendant was willing to consent to an injunction in order to retain his eligibility status. In the building trades and among building and roads contractors conditions in Government contracts were very valuable in securing code compliance, and the tremendous purchases, under such contracts, of steel, cement, lumber, machine shops, products, cotton garments and paper undoubtedly greatly aided enforcement by other means."(**)

(*) See section II, Litigation Activities, below.

(**) "Extra Judicial Methods of Enforcement", Work Materials No. 27, Legal Enforcement Studies Section, Division of Review, NRA, Jan, 1936 pp.44.

Other testimony may also be cited relating to the effectiveness of this agency of compliance. The National Fertilizer Association News, in its issue of April 18,1935, stated that the cancellation of certain government contracts had acted as an efficient means of bringing about conformity with code provisions in that industry. The History of the Code for the Builders Supply Trade also testifies to the efficacy of the activities of the Government Contracts Division.(*)

The work of this division was handicapped in some cases, it is said, because of the fact that the Division was unable to secure definite and certain information concerning whether or not a given action complained against constituted a code violation. Its position was thus rendered difficult when, after attempting to have contracts cancelled because a given concern had violated a code authority interpretation of a code provision, this interpretation was held to be an improper action on the part of the code authority.

(*) See page 19 of the code history.

II. LITIGATION ACTIVITIES

A. Number of Cases Handled.

There were, during the life of the NRA, 2,064 cases referred to the Litigation Division for court action. (*) Of these cases, 279 involved failure to file prices. (In most, if not all cases, other violations were associated with failure to file prices.) The number of cases involving selling below filed prices is not available, since such cases, in the tabulation made by the Enforcement Studies Section, were lumped with a number of other types of violations under the heading "Violations Involving Minimum Price."

The 279 cases were distributed among the codes as follows:

Code	No. of Cases Involving Failure to File Prices
Lumber and Timber Products	78
Retail Solid Fuel	23
Retail Lumber	21
Retail Monument	11
Wholesale or Distributing Trade	9
Builders' Supplies	9
Graphic Arts	8
Fabricated Metal Products	8
Electircal Manufacturing	6
Business Furniture	5
Funeral Supplies	5
Cigar	4
Wholesale Confectionery	4
Baking	4
Ice	4
Crushed Stone, etc.	4
Rubber Manufacturing	4
Slate	4
44 Others (3 or less cases each)	68
Total.....	279

B. Attitude of the Litigation Division Toward Prosecution of Price Filing Cases.

Mr. Robert Denvir, Chief of the Enforcement Studies Section of the Division of Review, in response to questions concerning the policy of the Litigation Division in prosecuting violations of the price filing provisions, stated that there was no general policy with respect to the type of cases which the division would prosecute. However, he continued, few if any cases involving only failure to file price were brought up for court action, since it was necessary, in each case successfully prosecuted, to show that interstate commerce was affected or involved. It was difficult or impossible, he stated, to demonstrate that the failure to file prices had adversely affected interstate commerce, and hence cases involving failure to file

(*) Data supplied by the office of Mr. Robert Denvir, Enforcement Studies Section, Division of Review, NRA.

prices or failure to adhere to filed prices were not actively pushed by the Division unless the transaction involved in the price violation was clearly of an interstate character. In general, it was felt that a violation of price filing provisions could not be successfully prosecuted by itself. (*)

SECTION C - NRA POLICY RELATING TO OPEN PRICE FILING

SUMMARY

The preceding sections of this chapter have presented the work of the NRA in supervising code authority administration of the price filing provisions, and in assisting to obtain industry compliance with their requirements.

The present section traces the development of the policy which guided the Administration in its dealing with the subject of open price filing as a whole.

Two major trends are apparent in the official policy statements of the NRA with respect to price filing, and in the views set forth by the various advisory divisions and boards. The first of these is an evolution from an almost wholly uncoordinated and unoritical acquiescence in open price programs as presented by the sponsoring industries, to a carefully considered and definitely announced policy dealing with both the aims and the techniques of the price filing device.

The first code providing for price filing was approved on August 4, 1933. As late as March, 1934, a spokesman of the Administration stated that no official price filing policy had as yet been formed. At that time more than 300 Codes, a large proportion of them containing open price provisions, had been approved. On June 7, 1934, with the issuance of Office Memorandum No. 228, the first official pronouncement of price filing policy appeared.

The second principal trend accompanied the first. The provisions approved during this early period were diverse in form. The industries proposing them were frankly intent upon price stabilization, which in many instances was taken to signify price control. The price filing provisions were in the main designed to effectuate this. Policy development in the Administration, however, tended definitely away from this aim and toward the objective of price publicity divorced from price control.

(*). The dubious legality of many of the open price plans set up in pursuance of code provisions was also a factor, if we can judge by the memoranda of individual legal advisors. Note particularly the business furniture, macaroni, folding paper box cases referred to in the text of this study. Further study of the subject of this section would be desirable.

To achieve this aim required that the price filing provisions be more uniformly drawn, and that specific safeguards and limitations, based upon administrative experience, be written in. Office Memorandum No. 228 set forth the first model price filing clause. The following are among the safeguards which were progressively sought to be thrown around the price filing provisions in the movement to make them more nearly mediums of price publicity and less mechanisms for the maintenance of price:

The rule was laid down that prices must be filed with confidential and disinterested agents rather than with the code authorities.

The waiting period prior to the effective date of price reivisions was declared contrary to policy, except in special instances.

It was held that price filed must be actual selling prices, instead of merely minimum prices.

Mandatory customer classification, which had frequently been incorporated as part of the price filing provisions, was forbidden.

Restrictions upon premiums, "free deals" and advertising allowances, other than that they be filed along with prices and terms of sale, were declared to be contrary to policy.

In order that there might be supervision of price filing plans and study of their effects, it was stated in newly incorporated provisions that no price filings could be destroyed without the written consent of the Administrator.

It was ruled that price lists should be disseminated immediately upon receipt by the agency receiving them (this both aided in price publicity and prevented suspension of low prices by persons interested in maintaining or increasing price levels).

It was required that all price information, including all terms and conditions of sale, be filed.

It was provided that filed prices must be made available to all interested parties (including customers).

There was by no means entire unanimity within the Administration itself upon these points, nor acquiescence in them by industry; neithter was there any great progress made in applying this policy to the many, and highly important, codes whose price filing provisions had been approved prior to the policy formulation. Nevertheless, the above represents in general the prevailing point of view concerning price filing policy at which the Administration had arrived when the code period came to an end.

In the following section the general course of this policy development, and the principal factors affecting it, will be traced, beginning with the debates in Congress preceding passage of the National Industrial Recovery Act in June, 1933, and carrying through to the invalidating of

the codes by reason of the Schechter decision in May, 1935.

I. SENATE DEBATES ON PRICE FILING PRIOR TO PASSAGE OF THE NIRA.

Among the earliest intimations linking the subject of open price filing with the proposed National Industrial Recovery Administration, and indicating the objectives sought by such a policy, may be found in references to the subject made in the Senate while the Act was being debated. This has already been referred to briefly in the introductory chapter of the report.

At that time, Senator Borah wanted the anti-monopoly clause of the Act supplemented by an anti-price-fixing clause and an anti-restraint-of-trade clause. Senator Wagner, one of the chief proponents of the Act, objected to these proposals, holding that - "* * * a prohibition of 'restraint of trade and price fixing' as these phrases have been interpreted by the courts would stand in the way of the most salutary effects which the bill is designed to accomplish."

He continued:

> "For instance, exchange of information, which serves to make competition rational instead of blind and destructive and which thus expands trade and commerce, would be prohibited. It was declared an illegal restraint of trade in U.S. vs. American Linseed Oil. (*)
>
> "Price stability as distinguished from monopolistic price fixing, is a universally recognized necessity in order to achieve economic welfare, and yet it would be made practically impossible by the Borah amendment. This amendment would prevent even the publication by business of their own price schedules and their adherence to these schedules even for short periods of time. Such a practice was declared an illegal restraint of trade in the Linseed Case. Yet such practices might be necessary to prevent unfair price cutting and other destructive price manipulations." (**)

Speaking of this debate and of its legal implications, Mr. George J. Feldman, Assistant Counsel of the Litigation Division of the NRA, in an undated "Memorandum of Law Considering the Legality of Code Provisions Requiring the Filing of Prices" wrote:

> "One of the Supreme Court's favorite methods of determining what changes were contemplated by a new statute is a resort to the intention of Congress, which may be in part adduced from the Congressional hearings and debates. That price filing was definitely contemplated is obvious from the debates.

(*) U.S. vs. American Linseed Oil, 262 U.S. 371-1923.

(**) Congressional Record, June 13, 1933, page 5840.

Indeed, a close reading makes it appear that, in the proper circumstances, it is almost the duty of the Recovery Administration to include when in the interest of a stable market.

".....It is significant in this respect that an amendment to the original Recovery Bill was offered in the Senate, which sought to forbid combinations in 'restraint of trade and price fixing'. The fact that these provisions did not find their way into law as finally enacted is of the utmost importance. As was stated by Mr. Justice Cardozo ... (in another case), the omission may have been unwise, but it certainly was not inadvertant. ..... It is of special significance that Senator Borah made several unsuccessful attempts to have his amendment reinstated after the conference report had been submitted and before the final vote was taken. In fact, this issue was the highlight of the Congressional debates.

"In view of the established intent of Congress, which not only permitted but encouraged price filing when necessary, the Recovery Administration has no alternative. The intent of Congress governs."(*)

Two points of particular importance appear from the foregoing: first, that "price stability as distinguished from monopolistic price fixing" was one of the primary aims of the Act, and second, that it was the apparent intent of Congress that price filing under the NRA should be "not only permitted but encouraged * * * * when necessary".

The working out in terms of administrative action of what thus seems to have been the basic legislative policy with respect to the filing of prices will be seen in the Sections following.

II. FIRST NRA PRICE FILING PERIOD - JUNE 16, 1933 THROUGH JUNE 6, 1934- EXPERIMENTATION AND SEARCH FOR A POLICY.

Almost precisely a year elapsed from the date of the passage of the NIRA to the time when a definite and relatively complete policy with respect to open price plans was formally enunciated by NRA. This period was characterized by the adoption of a large number of codes containing price filing provisions differing widely in various details, and, especially during its later months, by an increasing tendency toward critical examination of the effects of these diverse experiments and search for some basic policy with respect to them.

A. Six Months of Price Filing Experimentation.

The fourth Code to be approved under the NRA contained a detailed and comprehensive price filing plan. This was the Code for the Electrical Manufacturing Industry approved August 4, 1933. Numerous others quickly followed. During this period of intensive code-making many codes, includ-

---

(*) Legal Division NRA files, "Price Filing, No. 413".

ing those for major industries, were approved with price filing plans to which virtually no consideration had been given in the public hearings. During this period, in fact (with certain exceptions to be noted later) little serious consideration of any kind was given either to the nature or the possible economic effects of the price filing provisions as provisions as proposed or approved.

1. Reasons for Administrative Attitude.

One reason advanced for this early attitude of relative inattention to the price filing plans on the part of NRA is the primary preoccupation of the Administration during this period with the task of obtaining satisfactory wage and hour provisions in the codes for the purpose of relieving the unemployment emergency and bolstering purchasing power. Again, the aim of price stabilization - already noted in the Senate debates - was almost universally sought by the industries proposing codes, and was to a considerable degree acquiesced in by the Administration, especially when claimed as an effect to the increased labor costs assumed. The policy of the Administration therefore, insofar as it may be called a policy, appears to have been to approve what the industries asked for with respect to price filing provisions, without serious questioning. It was, in fact, a period of broad experimentation with price controls of various kinds, and with price filing methods in particular.

As an illustration both of the general nature of the price filing plans approved during this period, and the scant attention given them in the process, an account of one of the typical early provisions may be given.

2. The Price Filing Plan in the Electircal Manufacturing Code.

This Code, as remarked above, was the fourth to be approved under NRA and the first to contain a price filing plan. Only one reference of any significance concerning filing appears in the transcript public hearings on this code. Deputy Commissioner Allen, who conducted the hearing, in speaking of the plan, said:

> ". . . the intent is that a manufacturer may at any time elect what he wants to sell his goods for; if he does, he reports it to the supervisory agent, showing his list and discount, placing upon him the obligation to publish that to all competitors and interested parties, and it provides the opportunity for any manufacturer to change his list and discount at any time he wants providing he will not sell below his published discount price, so long as the period of that list and discount is effective." (*)

(*) Transcript of Hearing on the Code for the Electrical Manufacturing Industry, July 19-21, 1933, Vol. I, page 224.

Nothing else of importance concerning price filing appears in the transcript of the hearing. None of the reports on the final draft of the code submitted by the boards and divisions of the Administration to the deputy administrator prior to approval contains any reference whatever to the price filing provisions. Similarly, in the historical summary of the main points discussed in the development of the code, which Deputy Administrator Allen submitted to the Administrator when the code went up for approval, there is no mention of the open price plan. (*)

The essential points concerning price filing, contained in Article X (**) of the Electrical Manufacturing Code, were:

1. If the code authority determined that it was customery in the industry to sell products on the basis of printed price lists, it could require the filing of such lists.

2. If the code authority determined that conditions in a subdivision which had not previously sold on the basis of price lists were similar to those in a subdivision which had, it could require that the former subdivision also file prices.

3. A ten day waiting period was provided for revisions of price lists.

4. Competitors could file revised lists to become effective on the same date as a revision about which they had been notified.

5. All known manufacturers in the Industry were to receive the original and revised price lists.

6. Members of the industry were forbidden to sell <u>below</u> filed prices. There was no requirement that they sell <u>at</u> filed prices.

It will thus be seen that what later was to become one of the principal points of contention with respect to general NRA policy concerning price filing - the waiting period before revised prices could become effective - was written into the code and acquired something of the force of a precedent in the very first price filing plan approved.

3. Early Dissent With Respect to Price Filing Provisions.

While what has been previously said as to the degree of attention paid to the price filing plans in process of approval reflects the general situation at this time, certain groups and individuals within the Administration, and closely connected with the code-making process, soon began to object to, or at least to question tentatively the wisdom of, the types of open price provisions which were being written into the codes.

(*) Mr. Sterling McKittrick, who was an assistant deputy engaged in the administration of this code, stated that he is of the opinion that minor comments on its price filing provisions were made by some of the high Administration officials in memoranda prior to the approval of the code. These have not been located by the Price Filing Unit.

(**) Codes of Fair Competition, as Approved, Government Printing Office Vol. I, p. 49.

Although the objections of these individuals and groups did not serve immediately to alter the nature of the plans which were being approved, the type of policy eventually adopted by NRA was, as will be seen in a later section, materially affected by the dissenting opinions expressed in these early months of code formulation.

Several instances of these dissident attitudes follow:

(a) The Code Analysis Division.

During the latter part of July, and during August and September of 1933, the Code Analysis Division headed by Mr. Stephen De.Bruhl, served in a sense as a policy advising group for the Administration. According to information secured from Mr. W. W. Bardsley and Mr. Pat Taft, both of whom were members of the division, the function of the group was to take the codes shortly after they were originally submitted by the industries and comment on the provisions for the benefit of the deputies in charge of code negoitations. Their policy advising activities were of a rather negative character, according to Mr. Bardsley, who characterized the work of the group as that of attaching "red flags" to call to the attention of the deputies provisions of doubtful desirability. In general, Mr. Taft reported, this group looked with disfavor on price filing provisions and urged their elimination. The members of the division had no very clear cut reason for this, Mr. Taft stated, but were vaguely afraid that open price systems might be used in price fixing activities.

The following illustrates the position of the Division on open prices:

> "This article (in the proposed Code for the Machine Tool and Forging Machinery Industry) sets up an open price association. While the association as defined is not of an extreme type, the difference between an open price association and a fixed price plan is apt to be a narrow one." (*)

(b) The Division of Research and Planning

This agency, established to advise the Deputy Administrators and the Administration generally concerning the probable economic effects of code operation, and to study those effects, issued no formal statement of policy for the guidance of its code advisers. Mr. James Hughes, former chief of Code Administration Section of the Division, stated (*) that prior to the issuance of Official Memornadum No. 228 (price filing policy) on June 7, 1934, the division had no established policy on the subject.

Mr. Victor von Szeliski, who preceded Mr. Hughes in the administrative work of the division made the same statement but added that, nevertheles certain of the division's economic advisers looked with disfavor on waiting periods, and in general on the reporting of prices other than for closed transactions.

(*) Report submitted by Code Analysis Division to the Control Division on September 6, 1933, prior to the public hearing on the Code.

(**) In conversation with representative of Price Filing Unit.

(C) The Consumers' Advisory Board

Reports of the executive s of the Consumers' Advisory Board also, during the period up to the issuance of Office Memorandum No. 288, frequently indicated that the attitude of that board was, in general, opposed to the filing of any other than past prices. As for example, in the Board's report with respect to the Cement Code, dated September 15, 1933. In other cases no objection was raised to the filing of current prices, but only to certain types of current reporting. Opposition was also expressed to waiting periods in open price provisions, as in the report on the Lime Industry Code, September 16, 1933.

In a statement prepared as a guide to its Consumer Advisors, the Consumers' Advisory Board stated in a memorandum dated September 28, 1933,

> "....Under the guise of collecting information, the open price schedules proposed in some codes lay the foundation of monopolistic control of prices. Periodic collection of average prices or of the range of price quotations is desirable. Detailed reports of prices, qualities, name buyers, etc., in particular transactions may be made the basis for strong pressure to live up to tacit monopolistic understandings, and should be examined closely from that point of view.
>
> "Publications of scheduled future prices should be opposed as a device to facilitate price fixing agreements. In cases where such reporting systems cannot be ejected from the codes, they should be surrounded by four safeguards:
>
> 1. The time interval between the filing of a price schedule and the date it becomes effective should be reduced to a minimum in order to shorten the period of persusion. A five day interval, although too long, should be taken as the outside limit.
>
> 2. Schedules properly filed should become effective automatically without veto by any trade association, code authority, or producer.
>
> 3. It should be mandatory that at the same time and in the same manner as reports are made to other producers, the same reports should be made to buyers of the product. The only limitations upon this requirement should be that where the reports are made by mail, very small buyers, who have not requested such reports, may be omitted, and that where reports are made to an association, buyers who are not represented by an equivalent association should be notified in such other ways as will give them equal access to the information.

4. No time limit should be prescribed for the duration of a price schedule. Such limits often seek to eliminate long term contracts for future deliver, particularly in in cases where the contracts are at low prices in order to keep plants running during an off season. The consumer's interest lies in encouraging the stability of production by such contracts."*

4. The Beginnings of Official NRA Price Filing Policy.

While for the most part NRA price filing policy during this period was, as has been indicated, merely that which was implicit in the approved open price plans, with some critical opposition from particular groups, there were a few preliminary statements foreshadowing definite formulation of policy by the Administration.

The earliest model code, dated October 25, 1933, contained no preference to price filing; but a confidential policy memorandum carrying the same date did. This memorandum appears to have been the earliest authoritative statement of general principles as to open price systems under the NRA. It read in part as follows:

"Open Price Systems should be urged, providing that prices--

(a) shall be effective within not more than ten days in complex industries or five days in simple.

(b) shall be capable of withdrawal at the pleasure of the seller.

(c) are not subject to veto or modification by any agency.

(d) are to be generally published for the benefit of buyers as well as sellers."

This Memorandum, signed by Alvin Brown, was a statement of the conclusions reached at a meeting, held on October 25, 1933, of the Policy Board appointed at the direction of the Administrator in Office Order No. 35, issued September 16, 1933.

This Board was made up of the following: W. L. Allen, Alvin Brown, Thomas S. Hammond, Robert W. Lee, Edward F. McGrady, Charles Michelson, Malcolm Muir, Donald R. Richberg, Mrs. C. C. Ramsey, Alexander Sachs, K. . Simpson, Nelson Slater, Robert H. Strauss, Walter C. Teagle, A. D. Whiteside, C. C. Williams, and Leo Wolman.

(*) Confidential Memorandum from the Consumers' Advisory Board to Code Advisors, Dated September 26, 1933. In NRA files.

It should be noted that, with the exception of the approval given to the waiting period, the principles set forth in this earliest official expression of price filing policy - like most of the critical opinion recorded in the section preceding - tended to emphasize the proper function of the price filing plan as a medium of price publicity, as distinguished from a mechanism for price control. This fundamental divergence from what was generally seen as the industry attitude toward the price filing plans will be found to characterize NRA policy on the subject more and more as that policy develops.

It should also be noted, however, that in the case of a number of codes approved after the issuance of this memorandum, the policies expressed in it were not followed. The analysis of open price provisions prepared by the Research and Planning Division indicates that three codes and one supplement were approved after October 25, 1933, in which there was a waiting period in excess of 10 days. Of these, only one actually went into effect, the other three having had the waiting period stayed.*

Of perhaps even more importance is the fact that, according to this same research and planning analysis, there were, after October 25, 1933, when the policy memorandum was issued providing for availability of filings to customers, 137 codes approved which made no provision for buyers to receive filings.

(*) "Analysis of Trade Practices, Provisions Relating to Open Price and Bid Filing Systems", prepared by the Division of Research and Planning, NRA, revised and corrected through May 27, 1935, NRA files.

B. Six Months of Study and Search for Policy.

In the first half of this section there have been pointed out the rapid and largely unconsidered adoption of open price provisions in the codes, the outcropping of critical protest against the types of provisions adopted, and the beginnings of an official NRA policy with respect to open price systems, all of which characterized the first six months of the code period.

During the second six months of the NRA, various efforts were made to find out the actual effects of the several types of price filing plans that had been approved, and to take certain preliminary steps to safeguard open price systems in general against abuse. It had become increasingly apparent that certain aspects of price filing plans approved in the early codes were leading to undesirable results.

The Administration was still without explicit and authoritative price filing policy, although during this period various movements were set on foot which eventually culminated in broad, definite statements of principles. In addition, the Review Division did certain work in codifying expressions of policy on matters of detail.

The most drastic action so far taken in connection with a policy consideration affecting price filing was effected toward the end of this period by an official order staying all waiting period provisions not yet approved, pending the outcome of a general study of open price plans.

The details of these various developments are presented in the sections following.

1. Efforts to Ascertain the Results of Approved Price Plans.

In January, 1934, a public hearing was held by the NRA on "Price Changes". This action was taken especially for the purpose of giving an opportunity for expressions of opinion as to the actual operation of the price provisions. At that hearing considerable testimony was given to the effect that prices generally, and especially bids on government purchases, had increased and had become much more uniform since codes were put into operation. It was maintained by many that the open price provisions, and more specifically the waiting period in the price filing systems, were in large part responsible for this. (*)

(*) For testimony concerning identical bids, see statement of Mr. J. W. Nicholson, Purchasing Agent for the City of Milwaukee, Wisconsin, at the hearing on "Price Changes", January 9, 1934, pages 553-580. See also appendix "A" of the memorandum submitted to General Johnson on February 19, 1934, by the Consumers' Advisory Board.

This hearing was the first major move to ascertain the effect of the trade practice provisions of codes. Other similar efforts followed.

Largely as a result of the evidence produced at this meeting, three official NRA orders affecting open price provisions were issued successively. They were Office Orders 63, 63-A, and 63-B, the text of which follow:

OFFICE ORDER NO.63

January 25, 1934

Provisions for Open Price Associations

Pending completion of a study now being made as a result of the price change hearing, no further provisions for open price associations (including price registration) are to become effective in codes. Therefore, where such provisions are included in proposed codes not yet approved, they shall be stayed in the Executive or Administrator's order of approval for 60 days pending completion of the aforesaid study.

By direction of the Administrator.

Alvin Brown

OFFICE ORDER NO. 63 - A

January 27, 1934

MODIFICATION OF OFFICE ORDER 63 ON PROVISIONS FOR OPEN PRICE ASSOCIATIONS

Office Order No. 63 is modified to read as follows:

"Pending completion of a study of open price associations now being made as a result of the price change hearing no further provisions which prescribe a waiting period before the prices filed become effective will be approved in codes. Therefore, where such provisions are included in proposed codes not yet approved, they shall be stayed in the Executive or Administrator's order of approval for sixty days or pending completion of the aforesaid study.

"This Order is not intended to prohibit or stay provisions for open price associations which provide that revision prices shall become effective immediately upon filing."

By direction of the Administrator:

Alvin Brown

- - - - - - - - - - - -

OFFICE ORDER NO. 63 - B

January 27, 1934

MODIFICATION OF OFFICE ORDER NO. 63 - A ON PROVISIONS FOR OPEN PRICE ASSOCIATIONS

Office Order No. 63 - A is modified to read as follows:

"As a result of the price change hearing a study is being made of open price associations. This study particularly involves the waiting period before filed prices become effective. Therefore, any provision for a waiting period in codes not yet approved will be stayed in the Executive or Administrator's Order of Approval for sixty days, or pending completion of the study."

By direction of the Administrator.

Alvin Brown

An extensive but unsuccessful search was made by the writer to locate in the NRA files the originals of these orders, to which, it is assumed, would be attached recommendations concerning the orders by the officials concerned. None of the various sections of the organization in which the original orders might logically be filed was able to locate the documents. Therefore, it is not possible to indicate just why, two days after an order was issued staying all open price provisions, the stay was modified to apply only to those with waiting periods; and why on the day the second order was issued,

a third was promulgated which stayed only waiting periods.(*)

Whatever the precise reasons for the modifications, it seems certain that there was strong industry protest at this drastic move to curtail the right to a type of provision already possessed by large numbers of codified industries.

Moreover, in five codes, including supplements, the policy expressed in Office Order No. 63-B was not followed. The codes, approved after January 27, 1935, in which there were waiting periods which were not stayed, were:

232 Merchandise Warehousing
(Approved January 27, 1934)

287 Graphic Arts (All Divisions and 31 Appendices)
(Approved February 17, 1934)

401 Copper
(Approved April 21, 1934)

4-1 Refrigerator Manufacturing (Supp. to Electrical Mfg.)
(Approved June 9, 1934)

4-2 Portable Electrical Lamp and Shade (Supp. to Elec. Mfg.)
(Approved June 27, 1934)

According to a responsible administrative official, the action as to the codes listed above, with the exception of the Copper Code, was due to "prior commitments", which it was felt could not be disregarded. The Copper Code provision was of a special type.

Except for these cases, however, Office Order No. 63-B marked the definite adoption of a policy disapproving the further acceptance, at least without stay, of mandatory waiting periods in connection with

---

(*) In this connection it may be noted that Mr. Irving S. Paul, head of the code authorities of three of the subdivisions of the fabricated metal products industry, stated in personal conversation with the writer that the three codes with which he was concerned were up for approval just at the time Office Order No. 63 was issued. Mr. Paul reported that when he was advised that by virtue of this order the price filing provisions in his three codes were to be stayed, he protested vigorously to the Administration. He based this protest, he said, on the contention that the industries would have no price protection at all, and get nothing from the codes to compensate them for the increased cost burden the codes would bring. He felt that his protest, and his proposal to withdraw the application for the codes, were influential in bringing about the modifications contained in Office Orders 63-A and 63-B.

open price plans. (*) The stays imposed by that Order were never removed.

2. Special Studies Undertaken With an Eye to Policy.

As a further outgrowth of the hearing on price changes, and as a result of the increasingly felt need to find out what was resulting under the price filing provisions if a definite policy was to be formulated, both the Research and Planning Division and the Consumers' Advisory Board made special studies and reports during this period on the operation of the open price plans. Each of these reports included a number of policy recommendations, the principal points of which are summarized below.

(a) Research and Planning Division Report.

The first of these studies, dated April 3, 1934, was prepared by Mr. Simon Whitney for the Division of Research and Planning.

After surveying the operation of open price provisions in the codes approved up to that time, Mr. Whitney advised against complete elimination of open price provisions. He said that such a procedure would be "taking away a useful but dangerous tool instead of teaching its use."

Mr. Whitney's definite recommendations were:

"1. The reporting of prices on past transactions is already legal and should be permitted but the buyer should not be identified and even the seller's name should probably not be reported to his competitors, unless the industry can show a real necessity for identification.

"2. The exchange of current price lists should be permitted.

"3. The mandatory waiting period should be eliminated from codes unless a given industry can prove its necessity to prevent grave abuses, or unless the customers want it too.

"4. Price reporting should not be taken over by the government but the NRA should reserve the right to require copies of all price data to be filed with it.

(*) The later amendments, however, affecting the Lime and Cement Codes, continued approvals of waiting periods which had been included in the original provisions.

"5. Price reports should be made available to buyers as well as sellers, under reasonable conditions.

"6. Sealed bids should not be exchanged until after the award.

"7. Price fixing should be stopped by taking all price fixing provisions (of which price reporting is not one) out of codes, and by issuing a warning to industry followed by prosecution in case of continued price fixing."(*)

(b) Consumers' Advisory Board Report.

The second of these studies, undertaken pursuant to an order issued directly by General Johnson, was conducted by the Consumers' Advisory Board. This board had, almost from the first, as the preceding subsection has shown, been opposed to much in the open price plans which were being approved by the Administration. Typical of the attitude of this Board is the following extract from a letter to General Johnson dated February 19, 1934:

> "The recent hearing on price changes produced a considerable volume of evidence that open price systems are facilitating uniform price fixing ....the information at hand indicates that the difficulty cannot be dealt with merely by elimination of the waiting period. The basic difficulty as we see it is that open price systems, with or without waiting periods, identify the person or firm quoting the low price and thus facilitate the use of pressure to force his price up to the level generally desired in the industry....While we do not believe it desirable to eliminate the reporting of prices and price transactions completely, we feel that it would be possible to throw safeguards around the reporting in such a manner as to make more difficult the harassing of those who would keep prices down. To this end we suggest as worthy of your consideration, that actual prices charged in sales already made be reported to NRA agency pledged to keep the detailed reports confidential and to supply to members of the industry only statements of the range of prices at a given date. If the reported prices indicate that existence of questionable conditions, we believe that remedies can best be applied by such an agency rather

---

(*) "Open Prices" by Simon Whitney, Research and Planning Division, NRA, April 3, 1934, page 40.

than by those who have private interests at stake."

On May 4, 1934, after a study of the operation of price filing provisions, the Board issued a report. Its recommendations concerning policy were:

1. Important revisions are needed in nearly all open price provisions in codes.

2. Open price provisions should not be abolished until attempts have been made to remedy abuses.

3. In revising open price provisions, a model clause is not enough; varying conditions in the different industries should be taken into consideration.

4. The result of open price provisions should be true publicity. Therefore, code authorities should immediately upon receipt make all price information available to all members of the industry, to the government and to the public.

5. Code authorities should be prohibited from promulgating regulations concerning customer classification, grading, discounts, etc. under the guise of price filing forms.

6. There should be no revelation of identity of the filers; only the range of prices should be distributed. Therefore, a confidential agent should be the recipient of the filing.

7. Waiting period should be retained only if the above safeguards are made.

8. Detailed check on the operation of the provision should be made.

9. There should be prompt investigation of alleged abuses of price filing systems; if there was abuse proven, the system should be suspended automatically pending a hearing concerning revision of the plan.(*)

It will be noted that the recommendations contained in these reports of the two advisory divisions were in substantial agreement upon the following general points: (1) that open price filing systems should not be done away with until efforts had been made to remedy the abuses connected with them; (2) (by implication) that features related to price publicity should be encouraged and those tending to price control should be weakened; (3) specifically, that the waiting period should be abolished except where positive need for it could be shown; and (4) recommended changes should apply to codes already approved, as well as to future approvals.

(*) "Experience with Open Price Provisions of Approved Codes", Consumers' Advisory Board, NRA, May 4, 1934, pages 39-42, NRA files.

3. Further Search For a Basic Policy.

A further effort to ascertain the results of the price provisions in the NRA codes, and to help in the formulation of a basic price filing policy, took the form of a series of conferences with code authorities held in March, 1934.

That even at that late date no definite policy had been adopted is evidenced by the following statement made by Mr. A.D. Whiteside in his introductory remarks as chairman of one of the group conference on "Prices", held as part of these general code authority conferences:

> "***I must reiterate, in closing, and say to you that irrespective of rumors to the contrary, the National Recovery Administration has formulated no conclusion for a definite opinion regarding open price provisions*****"(*)

Still another evidence of the absence of definite policy, even at a date when most of the major codes had been approved, is seen in the fact that although the "Suggested Outline for Use in Code Drafting", dated April 5, 1934, notes as a possible Rule 11 of Trade Practice Rules, an open price provision, no model is suggested. The outline states that a suggested form of open price provision would be "separately circulated". As far as can be discovered, however, no such model provision was distributed.

To these scattered and largely uncoordinated attempts on the part of the Administration to reach a definite position on open price systems, as set forth in the preceding pages, there was added, on April 9, 1934, a somewhat more systematic effort resulting from the issuance of Policy Order No. 83 which created the office of Assistant Administrator for Policy.

Subsequent to this a Policy Group of four was appointed consisting of Mr. Blckwell Smith, Mr. Leverett S. Lyon, Mr. William W. Bardsley, and Mr. L. C. Marshall. This group advised different administrative officers in the NRA on policy matters, some of which related to price filing. An undated document has been prepared concerning the work of this group; it is entitled: "Compendium of Abstracts of Policy and Other Statements issued by the Policy Group."(**)

(*) Conference of Code Authorities and Trade Association Code Committee Conference Group No. II "Trade Practices - Prices", March 5, 1934, page 3.

(**) Available in the office of the Legal Service Section, NRA files.

The following opinions on policies concerning price filing were expressed by this group prior to the issuance of Office Memorandum No. 228:

(1) Prices filed should be those at which the member sells, not his minimum price.

(2) A member of an industry should not be required by the Code to file delivered prices. The filing of delivered prices should not, however, be forbidden.

(3) In the case of an interpretation of a code provision, the group recommended that "**** the date of filing of prices, terms, or conditions of sale shall be deemed to mean the date of receipt of notice by the code authority, with instructions to the code authority that it adopt regulations that such filing must be by registered mail with return receipt requested."

Finally, it should be noted that policy statements touching at times upon price filing matters, were made during this period by the Review Division. This division, designated to advise the Administrator concerning conformity of proposed code provisions and rulings with NRA policy, was one of the first agencies to begin compilation of statements of principles. Unlike the advisory groups who represented particular interests (industry, labor and consumers) the Review Division did not attempt to influence the formulation of Administration policy. Rather, its function was to codify policy and precedents, as indicated by previous administrative action, and to check new rulings and code provisions against such a compilation. To some extent, therefore, action preceded rather than followed policy during a great portion of the code-making period.

An undated summary of policy prepared for the guidance of the members of the Review Division and based upon precedents, by Mr. Alvin Brown, contains a digest of matters of policy with respect to price filing as follows:

A mandatory list of extras embodied in a code was looked upon with disfavor; it was urged that in place of this the members of the industry in question be required to file their extras the same as any other price. (May 1, 1934)

A provision for filing prices by basing points was "believed valid" since each member was free when filing to define his own delivery bases. (May 1, 1934)

The policy of permitting the code authority to prescribe the price filing form was approved. (May 1, 1934)

The objection of a Consumers' Advisor to a provision that producers must include marble at filed prices in estimating on finished jobs was not sustained. It was contended that this was objectionable since the

producer could file whatever price he chose. (February 5, 1934)

These statements, it will be seen, deal with particular details related chiefly to the operation of price filing plans in specified circumstances, rather than with broadly considered matters of policy affecting the general question of open price filing.

4. Summary of the First Price Filing Period.

To summarize what has been presented above as to policy with respect to price filing in the first period considered -- from adoption of the Act on June 16, 1933, through June 6, 1934: -- price filing provisions were incorporated during this period in a large number of codes; these provisions were diverse in form, reflected in the main no uniform or considered policy on the part of the Administration, and were adopted largely as desired by the industries, whose interest was frankly in mechanisms for price stabilzation. Growth of criticism of this situation within the NRA itself, added to efforts to determine the actual effects of the price filing provisions (stimulated to some extent by outside dissatisfaction), resulted in various tentative efforts directed toward the formulation of a general policy. With the exception of the stay upon waiting periods embodied in Office Order 63-B, however, it may be said that there was no general declaration of price filing policy prior to the appearance of Office Memorandum No. 228 which opened the second NRA price filing period and which is the subject of the following section:

III. SECOND NRA PRICE FILING PERIOD - JUNE 7, 1934 to MAY 29, 1935 - DECLARATION, CLARIFICATION AND APPLICATION OF POLICY.

A. Office Memorandum No. 228.

This period was inaugurated by the appearance of Office Memorandum No. 228, the most important statement of NRA policy concerning price filing ever issued, and one of the most important of all NRA policy statements. The memorandum dealt with the question of price provisions in general, but its Exhibit A contained a very detailed and comprehensive setting forth of what were henceforth to be considered permissible price filing requirements, in which was disclosed a marked alteration of previous attitude in several respects.

1. Background of the Memorandum.

The origin of this policy statement is probably to be found in the hearing on price changes held in January, 1934, and noted under Section II, B, above. Abuses of open price systems uncovered at that hearing had led to various inquiries into the operation of the provisions, and the unfortunate consequences of lack of a uniform Administration policy as to prices in general had become increasingly apparent, resulting in the organization of a policy formulating group.

The immediate background of the memorandum was a group of policy recommendations submitted to Mr. Blackwell Smith, the Assistant Administrator for Policy, by Mr. Leveret S. Lyon, Deputy Administrator for Trade Practice Policy, in the latter part of May, 1934. The memorandum was also signed by the members of a policy committee working with Mr. Lyon. The members of that committee were: Mr. Milton Katz of the Legal Division, Mr. James E. Hughes of the Research and Planning Division, Mr. W.H.S. Stevens of the Consumers' Advisory Board, Mr. Edwin . George of the Industrial Advisory Board and Mr. Paul Hutchings of the Labor Advisory Board.

This memorandum contained, with only slight differences, what later became Exhibit "A" of Office Memorandum #228. In presenting this draft, Mr. Lyon explained that he had proceeded on three assumptions:

"(1) That price policies of the National Recovery Administration are to be designed in terms of a continuation of a capitalistic economic order;

"(2) that fair competition is desirable and

"(3) that fair competition requires knowledge of competitive factors to the fullest extent possible without unduly curtailing private initiative or giving rise to collusion and price fixing."

Mr. Lyon further stated:

"On the basis of these assumptions, I have concluded that open

price provisions properly drawn may be made a desirable part of a code of fair competition as a device to secure genuinely intelligent and free competition."

He further said that he believed that the model provision which was later designated Exhibit "A" of Office Memorandum #228, provided industry "with what is really necessary in the attainment of an open market."

Elaborating on the reasons for the various portions of the recommended provision, Mr. Lyon stated that waiting periods have been excluded because it was regarded as important "to retain the possibility of gain through the quick realization of market trends and prompt action. If business men are not permitted the possibility of realizing such gains, the incentive to alertness and the inducement to wholesome price readjustments is largely nullified." He stated that while there were some evidence and considerable feeling that waiting periods aided collusion, this was not the principal reason for omitting provision for waiting periods.

He stated that he believed that the facts that all prices had to be received by the confidential agent before they became effective, that they were to be immediately and simultaneously distributed to all buyers and sellers, and that they could not be increased for 48 hours were sufficient guarantees against abuses in the nature of "price raids."

There was some though apparently not a great difference in opinion in the committee concerning identification of sellers. In his memorandum, Mr. Lyon stated that he believed much was to be said for non-identification but that he felt that in view of the lack of standardization in so many lines, non-identification was impractical. He urged, however, that divisional and deputy administrators "be asked to attempt to work out such provisions for unidentifiable publication in every possible case, especially in dealing with industries whose products are well standardized." On the other hand, Mr. W. H. S. Stevens, of the Consumers' Advisory Board, expressing a minority opinion, urged that "the confidential agent should be directed to issue prices in unidentifiable form wherever practicable. The deputy administrators might then be instructed that they were to modify this rule only when it was clearly impracticable to release the price in unidentifiable form." This appears to be primarily a difference in emphasis; in one case the standard was to contain identification but deputies were to depart from the standard in this respect wherever possible. In the other case, the standard was to be non-identification and departures from it were to be made only where absolutely essential.

Mr. Lyon stated that requests from industries for waiting periods should be considered on the merits as "proposed departure from announced policy." A draft article providing for a waiting period of three days was submitted as a model for those cases in which the need for a waiting period was established by an industry.

He stressed the importance of the provision for filing with a confidential agent; this was an item of paramount importance, he maintained. This provision would have the following advantages, among others: (1) It would eliminate favoritism among members of the industry; (2) it would prevent the plan from being used to the detriment of customers and the public and (3) it would help to secure compliance with price filing provisions since filing would not be made with a group, such as a code authority, made up of competitors.

2. Principal Points as to Price Filing in Office Memorandum No. 228

The chief points in Exhibit "A" of Office Memorandum No. 228 as issued were:

(1) Filings were to be made with a confidential agent of the code authority, or, if there was none, with an agent designated by the administrator.

(2) Price lists were to be filed for all standard items and such non-standard items as the code authority should designate.

(3) Prices and revised prices were to be effective immediately upon receipt by such agent.

(4) Price lists were to be distributed at once to all members of the industry and to those customers who paid the cost of distribution. They were also to be available at the office of the agent for inspection by any customer.

(5) The code authority was to keep a permanent list of all prices filed.

(6) Revisions upward could not be made until filed prices were in effect at least 48 hours.

(7) All sales were to be made at prices listed, no higher, no lower.

(8) There should be no agreement, conspiracy, etc. concerning prices; a free and open market was to be maintained. (*)

3. Differences Between Submitted and Announced Draft.

The proposed price filing provision presented to Mr. Smith by

(*) As was noted above concerning Office Order No. 63, it was likewise not possible to locate the documents (other than the memorandum to Mr. Smith from Mr. Lyon quoted) which were exchanged with the Administration prior to the issuance of this order. For the full text of Exhibit "A" of Office Memorandum No. 228 see Exhibit V of Appendix A.

Mr. Lyon differed only slightly from the model provision as finally incorporated in Office Memorandum No. 228. The changes which are of significance are:

The provision as it was finally approved provided that prices should be filed with "a confidential and disinterested agent of the Code Authority, or if none, then with such an agent designated by the Administrator." The portion of the sentence underlined was not included in the draft prepared by the committee.

The final draft added to the proposed draft the section providing that all prices, in addition to being distributed, should "be available for inspection by any of their customers at the office of such agent."

The draft proposed by Mr. Lyon's committee provided that after a revision of prices, prices and terms should remain unchanged for not less than 48 hours. The final draft provided that a higher price should not be filed for 48 hours.

The following appeared in the original draft as a paragraph to precede all the sections incorporated in the final draft:

> "In order to prevent unfair competitive practices contrary to the policy of the Act by making generally available full information concerning prices and pricing practices, but not thereby to permit monopolies or monopolistic practices, this article provides for the open filing of prices and terms of members of the trade and/or industry."

Just as the foregoing paragraph, which was an introductory paragraph in the Lyon draft, was omitted in the final form, so the final form also omitted the following, which in the Lyon draft was the concluding paragraph.

> "If the Administrator on complaint filed or on his own initiative, after due investigation and on opportunity to the Code Authority and other interested persons to be heard, shall find that this article has permitted or is permitting action contrary to the provisions of the National Industrial Recovery Act or otherwise against the public interest, he may stay, modify or cancel this article or any part or application thereof, in accordance with such findings."

Other changes were in phraseology, and did not affect the sense of the text.

What was of particular significance about Memorandum No. 228, beyond the fact of a definite price filing policy being announced, was its assertion that a "free and open market" was proposed to be maintained, and its banning of waiting periods and other control features in favor of requirements aimed wholly at effectuating price publicity. It is obvious that such a change of attitude would meet with a certain amount of resistance and difficulty in application, especially insofar as such application might be attempted to be extended to codes already approved.

4. Policy Connected ith Application of the Policy.

Because the major codes had been approved before the issuance of Office memorandum No. 228, the effectiveness of this policy statement depended largely upon the attitude taken by the Administration with regard to amending codes to conform to the new policy.

Page 1 of this Memorandum contained an important statement concerning the application of the policy it set forth. It stated:

> "(4) Adjustment of Codes: Pending codes and codes hereafter submitted shall be adjusted to these policies. Divisional Administrators shall seek through agreements with Code Authorities of approved Codes to amend them to conform with these policies and, wherever resistance is encountered, the subject shall be taken up with the Administrator."

This statement, however, was considerably qualified by Office Memorandum No. 260 issued July 16, 1934, which stated in part:

> "....This (the fact that attempts were being made to formulate policy does not mean that every code in process and not approved at the time of announcement of a general policy must conform in the sense of including the type of provision favored by policy. Under certain circumstances it might be manifestly unfair to require substitution of a new clause after lengthy negotiations have finally resulted in assent by the industry to a supposed final form of the code.
>
> "Change in codes designed to bring them into conformity with policy will be required only to the following extent:
>
> "When in final form and assented to by the Industry, before the date of announcement of a general policy, the code, if otherwise acceptable, will be approved. However, provisions flatly inconsistent with the essentials of such policy will be stayed, to the extent of such inconsistency, until the Industry shows why such portions should not be permanently stayed or made to conform in substance to such policy."

As to approved codes, Memorandum No. 260 said that nothing would be done if the provisions contrary to policy was causing no difficulty, but in such cases the Research and Planning Division would check the operation of the provision - "Whenever desired by the Industry, or whenever the occasion is appropriate, changes will be effected." Whenever a provision out of line with policy was found to be causing difficulty, after consultation with the industry it should be stayed unless the difficulty were remedied. (*)

(*) For the full text of Office Memorandum #260 see Exhibit V of Appendix "C".

5. Reactions to the New Policy.

This modification of the Administration's position concerning application of the new policy came as a result of the opposition of members of industry and of certain individuals and groups within the Administration to the type of price provisions set forth in Office Memorandum No. 228.

Summarizing both the reasons for the change in Administration policy which culminated in this Memorandum and also industry reactions, Mr. Leon Henderson, Director of the Division of Economic Research and Planning at the hearing on Price Policy held by the Administration in January 1935, said:

> "...As to the open price feature. The open price provisions in the early codes departed from the best thought as to ideals of open prices. The...best ideals of open prices were those which were emphasized...by Eddy, the precursor of the plan, which were to provide publicity to competitors, to the public, to the Government, and the buyers, so that everyone might have notice as to what prices were being quoted and it was thought that secret rebates and the destructive influence of private prices and concessions would be largely dissipated if a strong open price policy were mainted.
>
> "The present policy, as enunciated in Office Memorandum No. 228, which is at everyone's disposal, is to get back to these ideals. Our files indicate, most naturally, that many members of industry regard price publicity in those idealistic forms as not of high value, and regard it as a means of preventing price cutting and as an agency by which coercion, mild and otherwise, as our files show, and our open price studies show, may be applied to competitors, who were getting out of line, and may be given notice as to what the industry thinks of them..."(*)

During the ensuing period there was frequent conflict between those groups within the NRA which favored the principles of Office Memorandum No. 228 and those within NRA and in industry who opposed it. Industry was particularly inclined to avoid any reopening of approved codes, since groups such as the Consumers' Advisory Board, which favored in most respects the policy of memorandum No. 228, sought, whenever a code was up for any consideration, to have it amended to conform fully to policy.

The fact that under the terms of Office Memorandum No. 228, price changes were to become effective immediately was one reason for the disapproval of it by members of industry. Thus the Code History for the Candy Industry says: "The Code Authority rejected suggestions that the provisions of Art. VII of the open price plan be amended in conformity with Office Memorandum No. 228, the members explaining individually that even though the waiting period was stayed by the Executive Order they

---

(*) See Transcript of Hearing on "Price Policy", Jan. 9, 1935, pages 32-4. NRA files.

still entertained hope that this stay might be lifted." (*)

The Code History for the Scientific Apparatus Industry also deals with the reluctance of industry to change codes. It states:

"A reluctance to propose amendments or to re-write the code was always evident. In the matter of price filing provisions, the presence of a waiting period of not to exceed fifteen days before revised prices become effective is sufficient reason for unwillingness to jeopardize the provisions deemed essential by proposing any amendments thereof." (**)

When a public hearing was held on September 25, 1934, to consider an amendment to the Macaroni Code which would provide that future contracts be limited to filed prices, all references to filed prices and emergencies were deleted from the amendment at the request of the code authority. This was done because the code authority was very anxious to keep the provisions prohibiting sales below cost in the code. They feared that if this section of the code were opened up for amendment they might be required to accept the wording of office memorandum 228. (***)

The situation relating to amending codes to include Office Memorandum No. 228 has been concisely stated by the writer of the Code History for the Fire Extinguishing Appliance Mfg. Ind. as follows "...It was early evident that an industry to which had been granted a waiting period applicable to price filing, a mandatory cost accounting system, and 'lowest representative cost,' would not willingly forego such apparent advantages in favor of the newer NRA policy pronouncements...."(****)

In short, members of industries with codes providing for a type of price filing suitable to effect price control as well as price publicity, were as might be expected, extremely loath to adopt a type of price filing which lent itself much less readily to effecting such control.

As a result of this classover the desirability of the new policy pronouncement, there was constant conflict between these groups within the NRA which favored the principles of Office Memorandum #228 and those within NRA and in industrial groups which opposed it. Those groups such as the Consumer's Advisory Board which favored in most respects the new price provisions endeavored to have the codes amended to conform to policy whenever any code was up for consideration, or whenever anything related to codes was to be approved. As a result there was a general indisposition to open up codes for amendment.

(*) Code History for the Candy Mfg. Ind. P. 81

(**) Code History for the Scientific Apparatus Industry, p. 12.

(***) See Code History, page 87 ff.

(****) See Code History, page 47.

The reluctance of industries to surrender their previous price control provisions in favor of the milder provisions recommended in Office Memorandum 228 was, in numerous instances, accompanied by a feeling of resentment that approval was denied to regulations that would effectuate existing code provisions, regardless of the fact that such provisions were contrary to the revised policy. There is some evidence that these attitudes were not limited to industry members but were shared by certain deputies who administered the codes, and by others who were advising on code modifications. It is obvious from communications addressed to Division Administrators and others that the principles of Office Memorandum 228 were never thoroughly accepted by some of those charged with the direct administration of codes, and in the best position to experience the resistance from industry engendered by the policy.

As one instance of this, as late as January 22, 1935 (six months after the declaration of the policy of June 7, 1934), a memorandum was addressed to W.A. Harriman, then Administrative Officer, from the Deputy in charge of the business Furniture Code, recommending approval of certain regulations for the maintenance of resale prices, and a liquidated damage agreement to enforce them. In submitting these regulations for the approval of the administrative officer, the deputy voiced the following opinion concerning the position taken by the economic advisor, who stated that the regulations were contrary to NRA policy as expressed in Office Memorandum 228 and should be disapproved:

> "I do not concur in this opinion. Office Memorandum 228 provides that the principles expressed therein shall be incorporated in all codes approved after its issuance, and where agreement can be secured, in all codes previously approved, but it does not forbid approval of regulations designed to effectuate code provisions contrary to these principles in codes previously approved.
>
> "It is my belief that so long as the industry continued to desire, and refuses to agree to deletion or amendment of a code provision not in accord with policy, and the NRA does not stay such provision, NRA should not refuse to permit action effectuating it, merely because the code provision is contrary to policy. To refuse approval for this reason is to my mind, coercive and unfair to the industry."

The National Recovery Board did not concur with the recommendation of the deputy in this case and the resale price maintenance regulations were not approved, although there was no immediate move to stay the extensive price control provisions in the code or to modify the code in accord with policy declarations. (*)

(*) The industry later asked voluntary stays of clauses requiring adherence to filed prices in two supplements of this code, but not to the supplement that had been interpreted by industry as containing resale price maintenance. A study of the code was ordered for possible revision after June 16, 1935.

When codes, in spite of industry opposition, were amended to provide for price filing of the type provided for in Office Memorandum No. 228, efforts were made in some instances to secure the control features of old style price filing plans even under the new type of provision.

The reaction of the builders' supplies industry took the form of opposition to the literal application of Office Memorandum 228, which had been inserted in their code by amendment. The administration member of the code authority for this industry in a letter to the deputy dated December 10, 1934, stated that at a code authority meeting the secretary of the code authority had urged agencies "under the terms of the new (228) price filing provision to 'take all the time necessary' in checking the filings and receipting therefor and urged that receipting be delayed at least for 48 hours." The letter from the Administration member continued:

> "His (the Secretary of the Code Authority's) attention was invited to the Code provision which prescribed that the prices filed by a member of the industry become effective immediately and that accordingly no member of the trade could technically be termed in violation of the code in quoting prices after he had knowledge through registered return receipt that his filings had been received. The Secretary argued this point bitterly and no doubt an appeal will be made to Washington, as it seems he has been advised that filed prices do not become effective until the Secretary has filed them in his own good time and has advised the members of the industry of such filing."

The difference of opinion over the application of the provisions of Office Memorandum #228 to the Code for the Farm Equipment Industry presents an interesting case, which is worthy of mention at this point. The producers of track type tractors in this industry were sharply divided over the desirability of incorporating the price filing provisions of Office Memorandum #228 in their Code. One group, headed by the International Harvester Company, opposed price filing unless there were included a provision which exempted from prices to be filed the prices quoted on government bids for track type contractors. The opposing group, headed by the Caterpillar Tractor Company, wished prices to be filed on all types of sales, including those to the government. In a memorandum dated July 16, 1934, to Mr. George McMulty of the Legal Division, Mr. W.L. Schurz, Assistant Deputy, summed up the controversy as follows:

> "The entire controversy can be reduced to this single issue... The background of the disagreement between the two groups is probably the intense rivalry between the International Harvester Company and the Caterpillar Tractor Company for the large government business in track-type tractors bought for road building and for other public work projects. At present, the Caterpillar Company has the great bulk of this business and fears that without price filing a price war would result, with the International Harvester Company taking the

initiative. On the [illegible] Company has repeatedly represented that price filing on government business inevitably results in identical bids and so defeats the purpose of such bids as designed to prevent collusion and price fixing."

The cost of retaining a confidential agent, and a desire that filed price information should not be available to customers, were other reasons advanced by the industries for opposition to Office Memorandum No. 228. The Code Authority for the Ladder Manufacturing Industry, at a hearing on amendments held on September 18, 1934, objected to filing prices with a confidential agent because of the additional expense involved, and also objected to dissemination of filed prices to customers on the ground that it was "none of our distributors' business what price they were quoting another distributor." (*)

Since this question of the employment of a confidential agent for price filing purposes was one of the significant new requirements embodied in Memorandum 228, some discussion of the point, and of problems which arose in connections with application of the provision may be included here.

6. The Confidential Agent.

The qualifications for a "confidential agent" under the terms of the model open price provision given in Office Memorandum 228 were never set forth in any formal order and, as a consequence, there was no established method for determing the eligibility of those selected by code authorities to perform such functions.

The code authroity for the Carbon Dioxide Industry, which was the first code to be amended in accordance with the new policy, appointed the chairman of the code authority, who was likewise president of the Carbon Dioxide Institute, as the confidential agent for receiving filed prices. The institute had acted as the agency with which prices were filed before the amendment to incorporated Office Memorandum 228. During this time there had been repeated complaints of monopoly and dominance of small by the institute members. In at least one case turned over for compliance action, resulting in the recommendation that the Blue Eagle be removed, the member had admitted his refusal to file prices and stated that he would be entirely willing to file them in Washington, but not with the code authority made up of the executive members of the Carbon Dioxide Institute. These same charges had been made at the original hearing of the code.

Subsequently, the N.R.A. required that copies of all price filings be forwarded to Washington, and at the request of the deputy an investigation was launched into the operation of the Code Authority as to the price filing and other provisions.(**)

(*) Page 63 - 67 of transcript of hearing, September 18, 1934, NRA files

(See other footnote on next page.)

Despite all this, there was apparently no NRA objection voiced to the appointment of the president of the institute as confidential agent when the model price filing provision was written in the code. An objection was made by the non-association member of the code authority, who was told that the form of the proposed code provision (with the exception of the naming of the chairman as confidential agent) was stipulated by the NRA and did not originate with the industry, and that, in the opinion of the code authority, the plan would operate better and at less expense with the chairman as the confidential agent.

The available records indicated that the Chairman, Mr. Pettee, was vice-president of the largest carbon dioxide company prior to his resignation to become president of the Carbon Dioxide Institute when it was organized just before the submission of the code. Other reports, not fully substantiated, stated that he held the controlling interest of a company given an exclusive distributor contract with this same large member. (*)

In still another case, the Builders' Supply Code, in which the price filing plan set forth in Office Memorandum 228 was introduced by amendment, it was desired to name the chairman and the Secretary of the code authority as the agents for the receipt of filed prices, on the grounds that they were not members or connected with the trade. The administration member, in a report to the deputy, raised the question if they could rightfully be considered members of the code authority if they were not trade members, as required in Article VI, Section 1, of the code. Present records do not show the answer given to this question.

In at least one instance, the Administration heard an objection to the qualifications of Stevenson, Jordan and Harrison as confidential agents. This organization, as agent for the Code Authority of the Corrugated and Solid Fibre Shipping Container Code, was designated as the impartial agent for receiving statistical information. One company refused to submit statistics because of the activities of Stevenson, Jordan and Harrison in operating the voluntary plan for sharing business which was participated in by a majority, but not all, of the members of the corrugated and solid fibre shipping container industry. The legal propriety of the two-fold agency relationship was questioned by the Agar Corporation, on the grounds that it introduced too great a strain on the agent to maintain a disinterested, impartial view. Unfortunately, for the purpose of ascertaining NRA policy on the necessary attributes of confidential agents, this particular issue was settled by compromise.

(*) Confidential Report on Carbon Dioxide Industry, op. cit.

(**) Confidential Report on Price Filing and Customer Classification in the Carbon Dioxide Industry, A. F. O'Donnell, May, 1935, NRA files

The appealing corporation was not ready to charge that the Stevenson, Jordan and Harrison group had actually violated the confidential character of information, and the general question of propriety of the dual relationship was ignored so far as any formal action on the part of the NRA was concerned.

Inasmuch as the corrugated and solid fibre Shipping Container Code Authority had never attempted to implement the price filing provision contained in that code, the question of filed prices was not involved in this particular hearing, although the market information service carried on by the agency, in connection with the voluntary sharing of business, was far more complete than that of the ordinary price filing plan, and to that extent was more comparable to the market information type of open price plan described in the Federal Trade Commission report. This same agency did conduct the price filing activities of other open price codes, however, using similar statistical reporting methods. (*)

It is fairly obvious, from comments by critics of open price plans, that the potential evils designed to be done away with by requiring prices to be filed with an impartial agent were of at least two distinct types: (1) the danger of favoritism in disseminating information or in disclosing confidential data to a competitor; and (2) the use of the price filing plan for coercion or for propaganda toward price control. The solution arrived at under Office Memorandum 228 was pertinent chiefly to the first end. This conception of impartial and disinterested, as applied to members of the industry, without specific regard to the interest of customers and the public, is not unlike the conception of unfair competition as applied literally to harmful effects upon competitors. Within the bounds of this interpretation, however, were failures to guard against cases such as in the Carbon Dioxide Code, in which non-members of the Association anticipated discrimination and were reluctant to submit prices and other statistical data to a trade association official. The possibility of <u>group bias</u> as well as <u>individual bias</u> was sometimes not considered in the appointment of such confidential agents.

7. Extent to Which New Policy Was Incorporated in N.R.A. Codes.

The principles of Office Memorandum #228 were quite generally applied to the price filing provisions of new codes in the last half of 1934 and the first half of 1935. However, because of the opposition of industry to the type of price filing in this memorandum as set forth above, and its unwillingness to open codes for amendment, and because of the vacillating policy of the Administration concerning

---

(*) The Folding Paper Box, the Kraft Paper and Sulphate Board divisions of the Paper and Pulp Code and the Envelope Industries are cases in point.

the amendment of codes to conform to new policy, in only a few instances were codes amended to include the new type of open price system. (*) Therefore the new policy, while not completely nullified, was rendered much less effective than it otherwise might have been.

According to Research and Planning study and other sources, 76 codes and supplements had open price provisions conforming to the policy and exhibit set forth in Office Memorandum No. 228 when code operation came to an end. Of these, 58 were approved after the memorandum was issued; the remaining 18 had been approved before the date of the Memorandum and had price filing provisions incorporated by amendment.

A break down of this information may of interest:

(*) Conformation in this section is based upon "Analysis of Trade Practice Provisions Relating to Open Price and Bid Filing Systems" prepared by the Division of Research and Planning of NRA revised and corrected up through May 27, 1935, and on other records.

CODES WITH OPEN PRICE PROVISIONS CONFORMING TO
OFFICE MEMORANDUM NUMBER 228.

NAME AND NUMBER OF DIVISION	NO. CONFORMING THRU AMENDMENT	APPROVED AFTER O.M. 228 ISSUED
I. Food Division	0	8
II . Textile Division	2	3
III. . Basic Materials Division	4	6
IV. Chemical Division	3	2
V. Equipment Division	2	13
VI. Manufacturing Division	5	18
VII. Construction Division	0	0
VIII. Public Utilities Division	0	1
IX. Finance, Graphic Arts and Amusements Division	0	3
X. Professional Division	1	0
XI. Wholesale and Retail Division	1	4
TOTAL	18	58

The codes in which the price filing provisions of Office Memorandum No. 228 were included by amendment were therefore relatively few, and most of them were for small industries. They include.

TEXTILE DIVISION

No. 396 Milk Filtering Materials and Dairy Products Cotton Wrappings

No. 312. Narrow Fabrics.

BASIC MATERIALS DIVISION

No. 115 Wood Plug
No. 389 Clay and Shale Roofing Tile (Pacific Coast Division)
No. 31 Lime (but see paragraph following)
No. 128 Cement (but see paragraph following)

CHEMICAL DIVISION

No. 275-2 Carbon Dioxide
No. 110 Hardwood Distillation
No. 83-A Soap and Glycerine (Pacific Coast Section)

EQUIPMENT DIVISION

No. 274 Saw and Steel Products Manufacturing
No. 315 Industrial Safety Equipment

MANUFACTURING DIVISION

No. 58 Cap & Closure
No.277 Gray Iron Foundry
No.289 Porcelain Breakfast Furniture
No.286 Beauty and Barber Shop Mechanical Equipment Manufacturing.
No. 84.6 Shoe Shank

WHOLESALE AND RETAIL DIVISION

No. 37 Builders' Supplies

PROFESSIONAL DIVISION

No. 362 Photographic and Photo Finishing

It should be noted that two of the above codes which are listed as conforming to the price filing provisions of Office Memorandum No. 228 by amendment, deviated from this model open price system in one important particular. These were the codes for the lime and cement industries. Amendment No. 2 of the Lime Code, approved April 1, 1935, and Amendment No. 1 of the Cement Code, approved on May 11, 1935, both included mandatory waiting of five days in price filing plans which otherwise conformed to Office Memorandum No. 228. Such waiting periods had, in both cases, been part of the provisions originally approved with the codes.

A further analysis of the material collected and tabulated by Research and Planning indicates that the first code (*) in which the price filing provisions of Office Memorandum No. 228 were incorporated was No. 473, Woven Wood Fabric Shade, which was approved on June 28,1934. After June 7, 1934 there were at least 11 codes approved (again not considering supplements) which contained price filing provisions varying in some respect from the standard set forth in No. 228. The last of these 11 codes was No. 492, Stereotype Dry Mat, which was approved on July 27, 1934. (**)

(*) Information about supplements to codes is not readily available.

(**) Among the important differences between the open price plan provided for in this code and Exhibit "A" of Office Memorandum No. 228 are the following:

1. Prices were to be filed with the code authority, not a confidential agent.
2. The code provided that if a member did not file, he should be deemed to have filed prices equal to the lowest filed and terms equal to the most favorable filed.

B. Executive Order #6767 - A Concession to Government Purchasing Agents.

As the promulgation of Office Memorandum No. 228 may be regarded as a response to demands from both within and without NRA that price provisions in general be safeguarded against use to effect too rigid controls, so Executive Order No. 6767 was issued in response to complaints of excessive price uniformity in bids on public purchasing, brought by various government purchasing agents - Federal, state and municipal. Also, as with No. 228, some compromise with opponents of the order is found in the process of its application, the percentage of "government tolerance" being in some instances reduced from 15 to 5.

1. Essential Points Involved in Executive Order 6767. The essential points in this order issued June 29, 1934, were:

a. A person subject to a code calling for price filing might, without violating the code, bid to a governmental body at a price less than his filed price by as much as 15%.

b . He must file with the code authority a copy of his bid after bids were opened, if he bid below his filed price.

c. The Administrator could reduce this 15% tolerance to as little as 5% if he found the 15% was resulting in destructive price cutting.

d. The Administrator was to report to the President on the effect of the order within 6 months after the date of the order.(*)

Cont'd.

3. According to the code provisions, if a member withdrew a price schedule and did not substitute a new one, he was deemed to have filed equal to the most favorable ones on file.
4. There was in the code a ten day waiting period on downward price revisions. (This was stayed in the order of approval.)
5. It was provided in the code that a member selling below cost to meet competition might adopt as his filed price the price of the member whose competition he was meeting. It further provided that "such adoption shall become automatically void upon the withdrawal or revision upward of the price adopted."
6. Filed prices were to be aminimum, not necessarily actual selling prices.
7. There was no requirement that filings be preserved or be made available to the Administrator.
8. The code did not contain the anti-conspiracy clause which formed the final paragraph of Office Memorandum No. 228.

(*) For full text of Executive Order No. 6767 see Exhibit V of Appendix "C".

This order supplemented an earlier NRA Administrative Order dealing with governmental purchases, Order X-48, issued on June 12, 1935. The salient features of this Order were:

In spite of any code prohibitions there might be to the contrary, members of industry biding on government contracts were, by authority of the order, entitled to:

a. Quote prices to government agencies as favorable as those permitted to any commercial buyer of the same quantity.

b. Make with government agencies a definite contract for future delivery of a definite amount within three months from the date of the contract at a fixed price.

c. Make such contract with a government agency for an indefinite amount for up to 6 months.

d. Quote to such agencies prices and terms to apply on contracts to become effective not more than sixty days from the date of the opening of bids.

e. Quote such agencies prices f.o.b. point of origin and/or f.o.b. destination.

"Provided, however, ...that nothing in this order contained shall operate to permit deviation from or abandonment of open price and cost protection provisions now or hereafter contained in any such code."(*)

2. Relation of Order No. 6767 to Price Filing Policy.

While the immediate effect of Executive Order 6767 was to permit sales in one very important purchasing field at prices considerably below those filed, and thus in a degree to nullify the filing provisions, the Order was nevertheless in the direct line of price-filing policy of the time in that, like Memorandum 228, it sought to eliminate undesirable consequences which had developed in practice, without abolishing price filing altogether.

The purchasing agents who testified at the price change hearings presented a large and convincing mass of evidence of the current tendency to price uniformity in government bidding. This was objected to, not only as indicating the existence of price control and the probability of artificially high prices for public purchasing, but also because it was seen as striking at a public policy of long and rather slow growth, namely, the awarding of contracts for government supplies on the basis of the lowest bid price.

What was desired was a means to maintain some measure of price flexibility in bidding on government requirements. Whereas Memorandum 228 sought

---

(*) For text of Administrative Order X-36 see Exhibit V of Appendix "C".

to achieve a similar general end by modifying the technique of price filing itself, Order 6767, employed the method of relaxing application of the open price requirement in the particular circumstance.

It was not, in fact, expected that actual quotations would drop the full 15% permitted, but rather that the competitive uncertainty as to just how far they would drop would tend to restore the "free" if not entirely the "open" market called for my Memo 228. For cases where prices showed a tendency to drop to a destructive degree, the modification from 15% to 5% was provided.

Nevertheless, the policy prescribed by Order 6767 met with strong reactions from many of the industries principally affected, as the following section will show.

3. Reactions to Order No. 6767.

As would be expected, the general attitude of industry members toward this Executive Order was not favorable.

a. Expressions of Industry Opinion.

Complaints against the policy embodied in the order were registered by a large number of the industries whose business was, in a significant degree, connected with governmental agencies. Five types of objections, not altogether mutually exclusive, may be noted. Many more illustrations of these types than are given, are at hand.

It was first contended, almost universally, that "destructive price cutting" and "price chaos" would result from operation of the Order. At a meeting of the governing committee of the water works Valve and hydrant producers sub-division of the valve and fittings industry, on July 6, 1934, a resolution was passed stating that the committee considered that the enforcement of Executive Order 6767 "would result in ruinous competition among the manufacturers of this industry." They further stated that "... unless exempted from this order we cannot guarantee to maintain or be able to afford the cost of the labor provisions of our code...."(*)

The second allegation made in connection with the Order was that it involved unfair discrimination. Thus, Mr. A. L. Boniface, Secretary of the Code Authority for the Fire Extinguishing Appliances Industry, in a letter to the NRA dated July 5, 1934 stated: "....We would also call attention to the unfairness of selling one unit of our product to a Federal, State or municipal or other public authority, at the same price at which we would sell a hundred such units. We would also point out the unfairness of putting the smallest village in the same class with the Federal Government as a buyer of products of this industry".

In the third place, it was contended that this order brought about secrecy and uncertainty as to probable prices to be quoted in bids. On

---

(*) Resolution contained in a letter from the Code Authority for the Valve and Fitting Industry to General Johnson, July 11, 1934.

this point the chairman of the code authority for the portland cement industry on July 10, 1934, wrote to the Administration: "....Our second objection is that the Executive Order practically eliminates the open price plan. The essence of the open price plan is to make competition fair and fully effective by putting all competitors on notice of the pertinent facts of the competition which faces them. This purpose is not effected if notice of the facts is given after the bidding is over. The Executive Order, therefore, effectively brings open dealing to an end and thrusts bidders once more into darkness with its attendant suspicions and lack of competitive facts....."

The order was also opposed on the ground that it would break down the established channels of distribution. The Code History for the Plumbing Fixtures Industry, commenting on this aspect, says: "The Industry strenously objected to Executive Order No. 6767 and Administrative Order X-48 permitting Industry members to quote the government as low as 15% below the lowest filed prices (prices to distributors). The Industry always regarded the government as a consumer. Most governmental sales were made through wholesalers or contractors. Hence many of the objections had their genesis at those sources. . . ."(*)

Finally, it was contended that the Order made compliance with the price filing provisions more difficult to obtain. On this point, the Code Authority of the Valve and Fitting Industry, in a letter to Mr. A. C. Cook of the NRA, said, on July 31, 1934: ". . . our code authority has not secured complete compliance by all members of the industry with the requirement that they should file their prices. Our efforts to secure this compliance has been defeated by the Executive Order itself which leads these non-cooperative members to assume that the administration does not deem it is good policy to file prices and abide by them in accordance with code provisions."

b. Attempts to Circumvent the Operation of the Order.

Various devices were employed, more or less legally, to defeat the purpose of the Executive Order.

Statements were issued attempting to dissuade members of industry from quoting prices to governmental agencies below those they had filed. Code Authority Bulletin No. 23 of the Gas Appliance Industry, dated July 11, 1934, and sent to members of the Industry, stated the provisions of the Order and concluded with the following paragraph:

> "Prices to Governmental Agencies should be fair and reasonable prices. The member of the Industry is not warranted in selling products of his manufacture to Governmental Agencies at less than cost. It is our hope that each member of the Industry will comply with all provisions of our Code and the Orders of the Administration. The Industry as a whole and each member of the Industry will be damaged greatly and if the members of the Industry use it the exception permitted under President Roosevelt's Executive Order will result in

---

(*) Code History, Plumbing Fixtures Industry pp. 60-61

destructive price competition."

Similarly, a code authority bulletin dated July 3, 1934, sent to the members of the suppliers, furniture and optical sections of the scientific apparatus industry, stated:

"Our members before availing themselves of this privilege (to bid as much as 15% less under Executive Order #6767) should carefully weigh its advantages or disadvantages on the following points:

"(a) This order is in the form of a privilege; you are not compelled to take advantage of it as it is purely optional. As your discounted prices would immediately upon filing the same at this office become available to all customers, the result would be that by giving the public buyer a discount, you have automatically lowered to all customers the level of your prices in all brackets to the amount of your discount. (*)

"(b) Your competitor is privileged to file a complaint with your manager that you are engaged in destructive price cutting.

"(c) Accourding to Article II, Section 1, Schedule C, all consumers must be given the same prices. Therefore, your filed quotation becomes your filed price effective at once and cannot be changed for 10 days. (**)

"(d) This of course, will not apply to franchise items whose terms of sale are determined by the manufacturer of the same.

"(e) All members are requested to report any violations of the above at the earliest possible moment which will be investigated at once by your manager.

"(f) You realize, of course, that your competitor by revising and filing his prices to you lower level can then reduce the same by 15% and, of course, the next competitor can also."

On May 3, 1934, the NIRA stayed the privisions relating the price filing, customer classification, and uniform sales terms of the Code for the Rubber Manufacturing Industy, in so far as they applied to the Mechanical Rubber Goods Division. This action, in large part, grew out of code authority connected with Executive Order #6767.

Discussing this action of the board, NRA Press Release #11170, dated May 3, 1935, stated:

"At the hearing held April 16 to 18, testimony adduced clearly showed abuse of authority. . . The hearings relative to the charges were con-

---

(*) This is a misunderstanding on the part of the code authority . The order did not have the meaning here given to it.

(**) Idem.

ducted by D. M. Nelson, former Assistant to the Chairman of the N.I.R.B. His findings, reported to the Board, were as follows:

"'That the evidence discloses: a participation by respondents, both as an individual code authority and in conjunction with the Rubber Manufacturers' Association and the Code Authority for the Rubber Manufacturing Industry, in an active and, for a time, a successful attempt to obtain concerted action among members of the Division, particularly those manufacturing fire hose, to disregard the provisions of Executive Order 6767...."

On January 23, 1935, the mechanical rubber goods divisional code authority sent a circular letter to all members of the division stating that the authority had taken exception to Executive Order #6767, which permitted members of all codes to quote prices on Government bids 15% below filed prices, that the code authority had requested an exemption, and that pending such action, members were to disregard the Executive Order. (*)

On February 5, 1935, in a memorandum to the dupty in charge of the code, the Code Legal Advisor, commenting on this release, said:

"The Code Authority is required to effectuate the policies of the Act and assist in the administration of the Code. It is a heinous disregard of their functions to issue such a statement as 'pending such action, they have deemed it advisable to disregard this order'. This is an illegal and unwarranted act asking Industry members to uphold prices on governmental order .."

This action of the code authority resulted, before the provisions of the code were suspended, in a boycott of a jobbing firm which attempted to sell to the City of Milwaukee fire hose at less than the uniform filed price. This firm bid about 8% below its filed price, pursuant to Executive Order $6767. It was unable to fill this order because no manufacturer would sell it the hose.

Attempts so to interpret the order as to affect its operation were made by certain code authorities. Thus, in a Bulletin dated July 16, 1934, discussing the Executive Order, the code authority for the Macaroni Industry stated: "THIS DOES NOT PERMIT YOU TO SELL BELOW COST IN VIOLATION OF ARTICLE VII SECTION 5 OF THE MACARONI CODE." (The caps are their) This interpretation was issued without any official sanction. When the issue was raised (by another code authority), the NRA Legal Division ruled that the order took precedence over code provisions concerning selling below cost. (**)

(*) Research and Planning Code Administration Study of the Rubber Industry, page 42-3, NRA files.

(**) See letter to A. M. Davis, Counsel for the Code Authority for the Mayonnaise Industry, dated July 23, 1934, by Lester S. Dame, Asst. Deputy Administrator. This letter states: "After checking with the Legal Division, I wish to advise that even though the 15% reduction of said price, as is permitted to a government agency under Executive Order 6767, represents a price below cost, a manufacturer may quote such a price ....." N. R. A. files

More might be quoted to the same general effect. In addition to this industry opposition, there was considerable divergence of opinion within the Administration itself as to the policy expressed in Order 6767, Nevertheless, the order remained in force throughout the remainder of the life of the codes.

C. Other Orders Affecting Price Filing Policy.

Issuance of Office Memorandum 228 had, as previously shown, definitely aligned Administration policy with the proposition that the proper function of price filing was to effectuate price publicity, rather than price control. A series of other policy statements followed which, while primarily concerned with setting limits to the use of specific control devices as such, also had a bearing upon price filing as a publicity medium.

1. Customer Classification.

The first of these policy statements, contained in Office Memorandum No. 267 dated July 20, 1934, related to customer classification. The general relation of this subject to price filing already has been indicated in Chapters Three and Four above. In various of the earlier codes, provisions had been included empowering code authorities to set up such classifications, which members were required to follow in reporting their prices. In practice, such mandatory classification had been found in some cases to work hardships on certain classes of customers. In other, the traditional business methods of individual members had been disrupted. More broadly, the making rigid of one element in the price structure was seen as possibly facilitating the effectuating of general price-fixing agreements.

Office Memorandum 267 was the Administration's answer to this problem. Its essential features were as follows:

1. The code authority was to formulate and keep current a suggested classification of types of customers.

2. The classification was to be subject to the disapproval of the administrator.

3. No members were to be required or coerced into putting any customer in any particular class, nor was any discount for any class to be required of any member.

4. Each member was to be free at all times to classify his own customers as he saw fit.

By thus making possible a suggested, but not mandatory, system of customer classification, the Administration proposed to minimize the use of such classification as a control device; but to the extent that it should be used by members in reporting their prices, the effectiveness of price filing as a medium of price publicity would be enhanced.

2. "Free Deals" or Premiums.

Another problem concerning which the Administration had to make policy

determination related to "free deals" or premiums. Many of the earlier codes, in the days when price control provisions were more readily granted had prohibited the use of premiums. If control of price was to be the objective, obviously such patent subterfuges as the giving of free items or premiums of significant value in connection with the sale of articles had to be prohibited. But if the objective was simply to make all dealings known and above board, with freedom to the individual to price and sell his goods as he saw fit, a completely different approach was necessary.

Office Memorandum No. 316, issued December 6, 1934, and dealing with this matter, stated that

> ". . . the proper way to prevent. . . evasion of any trade practice provision (where such attempted evasion is connected with premiums or 'free deals') is careful drafting of the provision in question. For example, in an open price provision, it should be required that all terms and conditions of sale, including premiums or 'free deals' and conditions relating thereto, must be filed."

Here again is seen a suggestion that publicity of prices be employed as one means of abating a questionable trade practice, rather than more rigid methods tending to price control.

3. Advertising Allowances

Similar to the situation relating to premiums is the question of advertising allowances. Again the position of the Administration, as expressed in official policy statements, was that there should be freedom to act, but that there should be publicity for the type of action a member of an industry chose to take. Office Memorandum No. 326, issued on January 5, 1935, said that the remedy for evils connected with the practice (use of advertising allowances as price concessions), lay in part in "causing that part of the advertising allowance which is actually a price reduction to appear in prices - reported prices, if the industry or trade has an open price plan." It also stated that the part of the allowance which was actually a payment for advertising or promotional service should appear as such, with a definite description of the service for which it was given.

4. Forward Contracts

The problem of limitation of the duration of forward contracts to sell had been presented to the Administration on a number of occasions. Definite policy on this matter was announced in Office Memorandum No. 327, dated January 19, 1935. The question involved may be summed up as follows:

> Any price control efforts on the part of industry groups could be effectively hampered if members could make long-term contracts to sell at a fixed price, regardless of later market changes. There were, therefore, efforts made, particularly because of the rising market which in many industries accompanied the life of the NRA, to have code provisions established a limit to the length of these contracts. Again, in the policy determination as to the matter, there

can be seen the effort on the part of the Administration to apply the principles of publicity without control. The order stated:

"1. NRA policy generally does not favor code provisions which would limit the permissible period of forward contracts to sell.

"2. Policy favors provisions, having the purpose of improving competitive conditions, which require the filing by each member of an industry in accordance with open price provisions of Office Memorandum No. 228, of his practices as to forward contracts to sell.

"3. In cases in which it is reasonably clear that the requirement for filing would be ineffectual, provisions which would limit the duration of forward contracts to sell may be approved if the following conditions are met:....."

Then are listed six conditions which required that the maximum contract period (1) be "reasonable", (2) be in line with past practice in the industry, (3) take into account special cases and problems, (4) be not of a nature as to create compliance problems, (5) be not of such a nature as to render employment and production less stable, and (6) give adequate consideration to the effect of the provision upon purchasers. (*)

D. Interpretations and Advisory Opinions

In addition to the official orders enunciating policy, various interpretations and opinions expressed by the Advisory Council (**) touched upon price filing questions.

The Administration position that publicity, not control, was the aim of price filing was reflected in Advisory Council opinions concerning the type of products on which prices should be filed. If control of prices is the objective, presumably any and all prices should be filed; if, however, the aim is merely to approximate an organized marked similar to the commodity and securities exchanges, certain products clearly do not lend themselves to price filing. Among the latter are products made to special specifications, and perishable commodities on which the price varies considerably from day to day depending upon the supply which must be disposed of. The first type of product is dealt with in a decision of the Council which was given in response to the following question from a Deputy Administrator in charge of the Non-Metallic Products Section: "Where codes provide for open price filing, is it a requirement that members of industry file prices quoted on orders placed with definite specifications given?"

The reply by the Council was:

"It is the sense of the Council that the Code Authority should not require the filing of prices on products which are manufactured on unique specifications until such time as there are

(*) For the full text of Office Memoranda Nos. 316, 326 and 327 see Exhibit V of Appendix "E"

(**) Set up to advise the National Industrial Recovery Board on policy matter.

recurring salesof such products - in other words, an open price filing provision may be applied logically only to such products as enter regularly into channels of trade. Where there are no persisting and recognized specifications, there appears to be little value in price filing." (*)

A case in which the advisory council expressed its doubts as to the applicability of price filing to perishable products, other than perhaps the reporting of past prices, concerned the code for the southeast fish and shellfish preparing and wholesaling industry.

Price filing provisions were "revised to restrict the obligation of the trucker (as opposed to the established wholesaler; there was, apparently, such dispute and friction between these two groups) to one of regularly reporting at the close of each day, to the appropriate agent, the quantity of each community sold at each price term, rather than to compel him to file prices in advance of sales and to adhere to filed prices."

Said the Council: "..... the change from advance price filing by truckers to price reporting upon conclusion of sales is an improvement, even though the whole effort in such an industry is still regarded as highly doubtful....."(**)

As has been noted above, one of the cardinal points of Office Memorandum No. 228 was that the price filed should be made available to prospective purchasers, as well as to industry members. The proposed code for the clock manufacturing industry followed Office Memorandum No. 228 for the most part, but did not provide for giving price data to consumers, and in one pl ce, provided that price must not be lower than (instead of other than) those filed. Because of these deviations from announced policy, the matter was brought to the attention of the advisory council. The decision of the council concerned ifself for the most part with the desire of the Industry to withhold prices from buyers.

The industry contended that large buyers would press to the utmost for price reductions and stated specifically that if all their price lists to jobbers and chain stores were open to chain stores, the latter would insist not only on as low a price as any jobber was sold but on a lower price because of quantity pruchases.

The decision of the council reads in part as follows:

".....The possibility that an entirely open price would not work to the Industry advantage is no warrant for permitting the Industry to pick and choose parts of policy that taken alone would give it in turn an unfair advantage. The obligation of distributing prices to customers is the responsibility that goes with the privilege of a free exchange of prices among sellers. To take one without the other was never contemplated by policy and would in fact amount to the declaration of a new policy. All other industries would be entitled to claim it as a precedent and thereby provide themselves with a perfect stage setting for price collusion." (***)

(*) I bid, page 87, Decision No. 92, November 9, 1934.

(**) I bid, Page 318, Decision No. 196, March 18, 1935.

(***) "Decisions of the Advisory Council", page 235. Office of L. C. Marhsal Head of Division of Review, NRA, and formerly Executive Secretary of

Accordingly, the council recommended refusal of the proposed plan on the basis of its being contrary to policy.

Similarly, if as Office Memorandum No. 228 stated, a free and open market was the aim of price filing, the code authority could not be empowered to suspend price filing; such a procedure was too susceptible to abuses involving price control. Therefore the council recommended disapproval when the gumming industry sought an amendment which followed the Office Memorandum in most particulars but which provided that the code authority could suspend any price it found to be willfully destructive. The suspension was to be for 8 days, and could be extended by the Administrator. The council said this put too much power in the hands of the code authority. It also said, however, that the request evidenced a perhaps justified need for some sound method of dealing quickly with genuinely destructive price cutting. (*)

Office Memorandum 228 provided that price changes were to become effective immediately upon filing. Reasons for elimination of the waiting period given by Mr. Leverett Lyon in the memorandum accompanying the proposed draft of No. 228 have been noted above. (**) The attitude of the advisory council on this point is illustrated from the following with respect to a proposed amendment, in which the lime industry accepted Office Memorandum No. 228's price filing provisions, except that it insisted on a waiting period. It advanced the usual argument that it would prevent "price forays." The council said that it had "considerable respect" for "the oft cited argument that, since the usual incentive to reduce prices is the chance to get more business, the effect of the waiting period in warning each member of the industry that any price reductions are likely to be met and therefore to be without advantage, will merely be to maintain prices. That is not a function of open price systems as the Administration conceives them. The council does not presume to offer this single point as closing the case for waiting periods, but does stand on the ground that the point is a strong one and that policy is still against them. The council recommends that the waiting period be deleted from the open price provisions." (Industrial Advisory Board dissented as to both premises and conclusions.)

The National Industrial Recovery Board, however, subsequently approved the waiting period in this code, the recommendation of the advisory council to the contrary notwithstanding. An extensive search has been made in the files to ascertain the reason for the reversal of the council's recommendations, but no information on the matter has been secured.

(*) I bid. Page 186, Decision No. 146, January 9, 1935.

(**) See Section LLL, A, 1, of this Chapter.

(***) I bid, Page 322, Decision No. 198, March 2[illegible], 1935.

IV. VIEWS ON PRICE FILING POLICY IN THE FINAL DAYS OF NRA.

The preceding pages have outlined the trend of development of a definite policy on the part of the Administration as a whole with respect to price filing, this policy being concerned chiefly with throwing various safeguards around the open price provisions approved, in order to prevent their undue use as devices for price control. That, despite this development, there still remained varying attitudes upon the question among different elements within the Administration itself, to the very end of its existence, is evidenced by significant expressions of opinion noted below.

A. Open Price Policy as Discussed at the Senate Finance Committee Hearing on the NRA, March 1935.

At the hearings held before the Senate Finance Committee during March, 1935, with respect to various aspects of NRA, questions concerning the price filing provisions were raised by certain senators.

Replying to queries of Senators Couzens and King, Mr. S. Clay Williams, then Chairman of the National Industrial Recovery Board, said:

> ". . . there is not anything in an open price provision in a code that fixes prices. . . . . There is an argument that it is desirable that the purchasers of any commodity in this country should know what (price) that commodity is moving to others at. . . ."(*)

Mr. Williams continued:

> ". . . If an industry comes forward and says that a majority of the industry is in favor of open price publication or an open price clause, I have been willing to say, 'well, all right with me if you want it.'"(**)

He continued by saying that one argument advanced for open prices is that they tend to prevent one producer from gobbling up the market at a secret low price. This, he said, was held by some to be undesirable since it would mean concentration of business and dislocation of business in plants not getting the orders. He said he felt this argument was important enough to outweigh the possible coercion of persons filing low prices, as contended by opponents of open prices.

The questioning continued:

Senator Cousens: "Is he (a member of an industry which has to post prices) not fearful of doing it (posting a lower price) because he would drag the others down and not get the business anyhow?"

Mr. Williams: "I believe he is."

(*)"Investigation of the National Recovery Administration", Hearing Before the Finance Committee of the U. S. Senate, March, 1935, page 246.
(**) Ibid., page 247.

....Senator George: The price posting has been done at least with the hope of keeping the price up.

.... Mr. Williams: "I assume that a great many people who were favorable to price posting were of the opinion that it would not be hurtful to prices...." (*)

Mr. Williams was asked concerning the identical bids which Government agencies had received, and if this did not indicate that competition had been eliminated. He replied that he thought not; that the identical bids came from the fact that all did the lowest price on file; he contended that had there not been price filing, bids would have been higher; he said that "The posting of prices tends to bring your bids down."(**)

The question was raised by Senator Black whether permission to have a price filing system should be granted by an administrative organization like the NRA or by Congress. Mr. Williams' answer was that he thought it was administratively impossible for Congress to do it; that only a body like the NRA could investigate the particular situation in an industry and find out.(***)

The general view of price filing here expressed differs little from that held by proponents of open price systems in the first days of the NRA.

B. Policy Views of Various Groups Within the Administration.

Other points of view expressed in the period immediately preceding the Schechter decision, and illustrating both divergences and agreements of opinion as to different aspects of price filing policy, are outlined in the subsections below. Certain of these expressions were the result of direct requests by the Administration for policy recommendations.

In April 1935, the Code Planning Committee was appointed to consider the policy to be followed in the revisions of codes which it was expected would be made after the anticipated renewal of the NIRA by Congress. Colonel Walter Mangum, Chairman of this Committee, requested suggestions from the Advisory Boards and Divisions concerning policy.

1. Consumers' Advisory Board Recommendations

On May 8, Mr. Corwin D. Edwards, Technical Director of the Consumers' Advisory Board, in a memorandum to Mr. H. Ferris White, Chairman of the Administration Subcommittee of the Code Planning Committee, said:

> "... the Consumers' Advisory Board believes that an open price system which includes publicity for the prices of individual concerns is so capable of abuse that the presumption is against it."

(*) Ibid., page 250.

(**) Ibid., pages 268-270.

(***) Ibid., pages 280-281.

He referred in this connection to the resolution of the executive committee on the Consumers' Advisory Board, passed on April 19, 1935.

This resolution expressed fundamental opposition to the open price policy hitherto employed by NRA, even as modified by Office Memorandum No. 228. The statement contended that reporting should be limited to past transactions and that the information circulated to participants in the reporting system should be in the form of summaries. It stated that in its view even an open price system so limited would serve no desirable public purpose in many markets in which monopoly exists.

In an earlier report, dated April 22, 1935, to Colonel Mangum, Mr. Edwards had stated that if current prices were to be reported and sellers were to be identified, the provisions of Office Memorandum #228 were satisfactory. In this memorandum also, however, he stressed the importance of the non-identifying, summary-only, past-transactions type of price reporting, contending that this type was capable of much less abuse than the kind provided in Office Memorandum #228.

Thus it will be seen that this board, which prior to the issuance of Office Memorandum No. 228 had argued strongly for the type of price filing set up in that memorandum, after the issuance of this policy statement moved still further in the direction of safeguarding the device, to the point of favoring non-identification of sellers.

2. Research and Planning Division's Recommendations

In connection with Colonel Mangum's request for suggestions from the Research and Planning Division, a memorandum prepared by C. A. Pearce and transmitted through Mr. James Hughes conveyed certain suggestions concerning the general problem of price filing.

His report endorsed the price filing policy set forth in New Series No. 1, dated April 23, 1935, (discussed later in this section), and stressed the importance of certain points made therein. It emphasized the importance of the filing of all terms and conditions of sale as well as the filing of nominal prices, if price filing was to be employed at all. The report stressed that this did not imply that price terms and conditions should be made uniform by code restrictions; on the contrary it contended that it was of importance that members of the industry have freedom in determination of terms and conditions. Summarizing this position, the report said:

> "It is felt that unless it is demonstratively practicable to file all the terms and conditions of sale used by members of a given industry, a price-filing system for that industry is not acceptable."

If the above conditions were met, the report continued,

> "It was unobjectionable to prohibit subterfuges which would make it possible to sell at less than filed prices."

Unless there was considerable standardization in industry products

it would be impossible to compare items on which prices were filed, it was stated, and the objective of publicity of prices would not be achieved; therefore, the report continued, there was no point in having a price filing plan in such an industry.

The report also stated that price filing provisions should be approved in codes only if the Administration were "satisfied that they (the price filing provisions) would not add an element of inflexibility to the price structure or be a subject of abuse."

In those industries where "dangers of abuse or of unfortunate economic consequences may be anticipated," the report recommended that the extent of price publicity be confined to the reporting of past transactions and their dissemination in such a way as to be unidentifiable.

The importance of the complete impartiality of the receiving agent was emphasized, as was also the necessity for having supervision of the operation and results of the plan by the Administration.

3. Other Policy Recommendations

While, as has been previously shown, the waiting period was regarded with disfavor by the Administration generally after the issuance of Office Memorandum No. 228, it found defenders within the NRA to the last. In a memorandum dated May 8, 1935, Ovid E. Roberts, Jr., Chairman of the Sub-committee on Trade Practice Provisions wrote to the chairman of the Code Planing Committee: ".... It is recognized that certain industries have fairly met the requirements of true competition where as much as a ten day waiting period has been provided. Your Committee submits that there are certain justifications for this waiting period which may not be lightly egnored. Essentially this is true in the case of industries made up of firms which do a nationwide business."

The memorandum went on to state that it should not be the policy of the administration to encourage the use of waiting periods, but that where they were justified, they should be safeguarded by a provision making it an unfair trade practice to exert any influence "inconsistent with the maintenance of a free and open market."

C. Final Statement of NRA Price Filing Policy.

What may be taken as the final official statement of the Administration as to the ends to be served by an open price system, its essential characteristics and field of use, appeared barely a month before the Supreme Court decision invalidating the Recovery Act. This was in "Administrative Policy", New Series No.1, issued by the National Industrial Recovery Board on April 23, 1935, "to expedite administrative procedure."

The portion of this document dealing with price filing was summarized in a digest of NRA policy prepared by Mr. Alvin Brown of the Review Division shortly after the decision.

This summary, portions of which are quoted below, shows increased clarity both with respect to the function of price filing and with respect

to the safeguards necessary. The summary is quoted here in order to give a complete view of the position which the NRA held on open price systems at the end of two years of experimentation with them.

"Open Price Filing.

Open price filing is a mere device. Its potentialities for benefit or mischief depend upon the purpose to which it is put and the methods which attend its use. The standard by which it should be judged is price making similar to that afforded by an open and competitive market, such as an organized commodity exchange.

"Objectives of Price Filing.

The ideal of an open and competitive market can seldom be fully attained. It is hoped to approximate its objectives by open price filing under appropriate circumstances. It is possible for the open file to allow buyers and sellers to accomodate their activities to competitive conditions, to fix limits to the spread of quotations at any given time, and to tend to make price perform its industrial function. Open price filing should, so far as possible, be made to furnish a public record of price movements, provide a check on discrimination among customers, give the small enterpriser information about the activities of his larger competitors, reduce the amount of deception among buyers and sellers, give the parties concerned a fuller knowledge of conditions affecting the market, and promote and safeguard the integrity of the process of competitive price making.

"Essential characteristics

The following are the essential characteristics of an open price provision:

"The filing agency

An impartial and confidential body should be the administrative agency in order that price lists may be distributed to members of the industry and to their customers without partiality and without efforts to influence the quotations. If the body is a private agency, its activities must be subject to the immediate oversight of the Government.

"Publicity

The prices must be genuinely available to all customers and members of the industry, together with the name of the seller whenever it is necessary to an identification of the quality of the product.

"Definite prices.

The filed prices must be those at which sales are actually to take place, rather than merely minima above which members of an industry may secretly vary their prices as they choose, or maxima from which discounts are to be allowed.

"Identification of product.

The various qualities, styles, and sizes of the product must be capable of identification.

"Complete filing.

Since any one of the terms of sale may be employed to vary the actual sales price, all such terms - quality, quantity, style, size, discounts, point of shipment, classes of customers, manner of payment, and so forth - must be filed in precise and definite terms.

"The field for use of open pricing.

"Unfavorable fields.

Open price systems should not be indiscriminately applied to the entire range of American industry. This device may require much effort and give little usable information where --

(1) Commodities differ so widely in quality, character, and accompanying services that prices are likely to vary with each sale.

(2) Where the number of concerns and products is very large.

(3) Where, through custom or convenience, prices remain stable and market changes lie mostly in the character of the goods sold.

(4) Where commodities are highly perishable and their supply fluctuates rapidly.

(5) Where the nature of the product makes identification of quality, style, or size difficult.

"Favorable Fields.

On the other hand, the feasibility of an open price system increases insofar as price competition is active, the products of the industry can be clearly identified, and price changes are frequently without being incessant.

"Factors to be Considered.

Consideration should be given to the following factors:

(1) Frequency and extent of price change.

(2) Complesity of terms of sale.

(3) Ease of identifying the product.

(4) Number and geographical diffusion of members of the industry.

(5) Degree of price competition.

(6) Economic importance of the product.

(7) In some instances, as where the finished product of one industry is the raw material of another, the conditions in correlative industries.

"Where open price systems should be avoided.

In certain industries, open price systems involve such probabilities of serious abuse that, even though they are feasible, they should be avoided. These are industries in which the need is to preserve competition against attack. Such is an industry in which the dominance of an enterprise or group is intimidating to smaller independents, or one in which the chief obstacle to collusion is the difficulty of devising machinery for price understandings. The field for open pricing is that in which competition tends to be active, but ill-informed and chaotic; not that in which competition tends to evolve into monopolistic restraint.

"Waiting Period

A waiting period is likely to freeze a competitive process which should be kept active. In an open market there is no counterpart of such a device. When prices are rising, a flood of orders during a waiting period may unsettle a future market. When prices are too high, the incentive to reduce them may be lessened by knowledge that competitors may destroy most of the sales advantage before reductions can become effective. Therefore, the general presumption must be against the use of the waiting period, and the burden of proof is upon the industry which wishes to employ it.

"Best case for waiting period.

Probably the best case for a waiting period can be made for industries in which sales are of large size and

small number, members are many and widely scattered, and information about prices cannot, for some reason, be quickly circulated.

"Limit on frequency of price change.

In industries where prices immediately effective are manipulated for the purpose of allowing large discriminatory discounts to privileged customers, it may be necessary to impose some limit upon the frequency of price change. In such rare cases this can be done by requiring that a price, once effective, must remain so for some reasonable minimum period."

The policy statement of April 23, 1935, also considered the desirability of the compilation of unidentifying summaries of prices based upon past transactions and stated that this method of price reporting involved neither the technical difficulties nor the possible abuses that might arise in the reporting of current prices. It said: "There may be many industries in which the ends of public policy will be adequately served ..." by these price summaries.

The board concluded by stating that it felt that the price filing device should be perfected and guarded against abuse.

A month and four days following this pronouncement the codes ceased legally to exist.

APPENDICES

Appendix - A

Price Filing in the Asphalt and Shingle Roofing Industry

CHAPTER I

DEVELOPMENT OF THE MODERN INDUSTRIAL AND REGULATORY SETTING

The Asphalt Shingle and Roofing Industry dates back to about the middle of the nineteenth century, but development was slow until 1900. The first trade association was organized in 1916 and according to a statement made some thirteen years later, the purposes were as follows:

> "The essential purposes of the association were stated by the secretary to be the general development of the industry and to increase consumption of the member's products; simplification and standardization; obtaining better freight rates; the development of statistics; industrial research; and work leading up to a national advertising and publicity campaign." (*)

It must be born in mind that this statement followed by a number of years the establishment of the association and the probability is that all of these activities were not anticipated at the outset. By 1923 or 1924 thirteen members reported their costs to, and received summarized reports from, the association. (**)

I. THE ASPHALT SHINGLE AND ROOFING ASSOCIATION

On January 1, 1926, the Prepared Roofing Association moved its headquarters from Chicago to New York and changed its title to the Asphalt Shingle and Roofing Association because "the old name did not correctly describe the business of the members." (***) These changes in no way indicated the death of the old organization, but rather a strengthening of the lines and in general the creation of a more closely knit unit. It is more likely that the aims and purposes of the Association, as quoted by the association secretary, are descriptive of this body rather than the previous one.

(a) Size

The membership of the organization is reported by the Federal Trade Commission in its report of 1929 as being 27, which number represented about 75 per cent, by number, of the concerns engaged in this line of business. Applying that percentage, there were at that time about 36 members of the industry and all but nine belonged to the Association.

(*) Federal Trade Commission, Open Price Trade Associations, 1929, pp. 429-430.

(**) Ibid, p.429

(***) p.429, Ibid.

In the same report it is stated that the membership of the Association represented "about 65 per cent of the volume of business as measured by sales." This figure would appear to be conservative; inasmuch as the Association included in its membership five of the six larger concerns and the largest single industry member, 85 per cent of the production would seem to be a more accurate estimate. At the lower figure a situation would exist in which a majority of the larger concerns roughly five-sixths, and a majority of the smaller concerns, roughly three-fourths, produced less on an average than the minority element.

B. Activities

The cost reporting and the dissemination of summarized costs undertaken by the Prepared Roofing Association (*) did not prove to be a worth while venture, and before the association reorganization, the activity had been discontinued for want of interest. After the reorganization had been completed, activities tending to keep the members better informed as to the status of the industry and their particular positions within the industry were begun. Among the various enterprises were:

> "Statistics. The Association, according to the character of the returns made by members, distributes each month reports of shipments, in four classes and a total, and shows the distribution by states. With the summarized reports, the Association returns to each member his original report to the Association. The Association also issues a weekly report of orders for the four classes, with comparison for identical concern with the previous month and the corresponding month of the previous year collected and handled in the same way as the shipment reports.
>
> The Survey of Current Business publishes monthly shipments of "prepared", based on the Association data prorated to 100 per cent.....
>
> Prices.- Whenever a member issues a price list to the trade he sends 80 copies to the Association, which, in turn, sends a copy to each member. If a change is made in any list, the manufacturer notifies the secretary, who in turn notifies each member.
>
> .....
>
> Others.- The Association is interested in simplification and standardization, and has a research associate at the Bureau of Standards. A revised simplified practice plan was put into effect by the Association late in 1927. It has a committee to cooperate with the Department of Commerce. A cooperative advertising campaign is contemplated." (**)

(*) Supra, p. A-1

(**) Federal Trade Commission, Op.cit., pp.429-430

The years in which each of these activities began are given in a letter from J. S. Bryant, former Secretary of the Code Authority and, since 1926, Secretary of the Trade Association, (*) as follows:

Report	Year started
Weekly Report of Orders	1926
Monthly Report of Shipments	1925
Monthly Report of Shipments by states	1925

The letter further states that these reports were compiled by a Confidential Agency, West, Flint and Company from information submitted by individual concerns. The reports in the form of summaries were mailed to the contributing companies, and at the same time the original data submitted by each company was returned. In a previous letter (**) Mr. Bryant informed Mr. Lawson that some of the companies did not make their reports directly to West, Flint and Company but reported to the Department of Commerce. These data were added by the Department to the summaries of the Association Agency and issued as a monthly report by the Bureau of the Census.

It may be seen from the above outline of activities undertaken by the reorganized Association that the members of the industry were becoming converted to the belief that a fuller understanding of the condition of the industry and of the relative standing of the individual members within the industry was more desirable than complete secrecy in business.

II. DEVELOPMENTS WITHIN THE INDUSTRY

Concurrently with the growing enthusiasm for industry organization other factors were developing which were to have a lasting effect upon the industry and industrial development. Two of these were and are of sufficient importance to merit attention. The discussion of these will of necessity overlap the chronological discussion of the various arbitrarily selected periods of this treatment, but it is felt that present consideration will not be confusing.

A. Paten Rights

It has been previously intimated that early in the history of the industry the guarding of innovations in products became customary, and it was the general practice to procure patents to protect developments.

(*) Letter from J. S. Bryant, Secretary to the Code Authority for the Asphalt Shingle and Roofing Industry to William Lawson, Assistant Deputy Administrator, July 9, 1934, (In NRA consolidated files, Asphalt Shingle and Roofing Industry, folder: "Statistics").

(**) Letter from J. S. Bryant, Secretary to the Code Authority for the Asphalt Shingle and Roofing Industry to William Lawson, Assistant Deputy Administrator, June 28, 1934. (In NRA files, Asphalt Shingle and Roofing Code, Statistics Folder).

These patents covered both the finished products and the processes under which they were made. Literally anything pertaining to the industry was made the subject of a patent; thus it is that today we find patents covering colors, composition, the direction in which the figres run, the materials used, the machinery used and other phases and steps concerned with the finished commodity. The fact that a product or process was patented did not mean that it was produced exclusively by any one member of the industry; in fact, for a period of time these rights did not seem to restrict the other members of the industry at all. Later it was customary for the one who owned the patent to grant a license to others to produce the product or to use the process so protected. This plan, it appeared, served two purposes; the licensor was permitted to fix the minimum price at which such commodities could be offered for sale, and royalties might be collected from those to whom the license was granted.

Originally these patents were rather equally distributed amont the respective members as the discoveries were made. Any lack of equal balance existing generally represented the variance in perspective and assiduity of the individual representatives. About 1920 the Flintkote Company undertook to get control of the patents affecting the products of the industry and by 1929 had acquired about 1000, which represented a considerable proportion of the total and far more than were held by any other individual manufacturer. The reason for this policy is not clear. However, as indicated above the acquisition offered the possibility of increased revenue through royalties and it afforded an instrument of price control through the license agreements, under which the licensor could legitimately fix minimum prices at which the controlled products might be offered for sale.

1. Patent and Licensing Corporation

By 1929 this department of the Flintkote Company had reached such proportions that the Patent and Licensing Corporation was set up to handle all patents and all license agreements arising from them. This Corporation was a wholly owned subsidiary of the Flintkote Company, capitalized at $1,000, and the checks to cover its operations were issued by the patent concern. The advent of this company marked the beginning of a rather vigorous licensing policy, and all concerns were urged to avail themselves of the privileges offered by such agreements. Frequently, as a means of inducement to the prospective licensees, it was pointed out that the increased earnings would more than offset the amount paid out in royalties. In some instances the Flintkote Company or the Patent and Licensing Corporation were unable to obtain outright ownership of the patents, but in such cases they were able to gain control through a pooling arrangement whereby the right to administer was turned over to them and the royalties were divided with the previous owner. Such agreements were entered into with Certain-teed, Bird and Sons, Ott and F. R. Brydle.(*) Under these agreements the pro rata amount to the respective companies depended primarily on the individual bargaining ability of the company representatives. In one agreement, the Hexogan, Certain-teed received 40 per cent of the royalties; and in another, the Multi-Color, the returns

(*) Patent and Licensing Corporation v. Weaver-Wall, D.C. N.D. Ohio, Testimony of Frank Gilchrist pp. 170 and ff. in Transcript.

were divided on a 50-50 basis. (*) It would appear from these arrangements that some additional advantages were expected to accrue from the fact that control of the patents was centered in the hands of one company.

B. Combinations, Mergers and Absorptions

The other movement which materially affected the picture of the Industry was that reducing the number of members. In its report of The Administration Of the Code Of Fair Competition For the Asphalt Shingle and Roofing Industry, the Code Authority states that:

> "In the ten years preceding the approval of the Code eighteen (18) companies were merged with other companies in the industry, six (6) fell into receivership, and one (1) burned up."(*)

The same report lists the following mergers:

1. Storm-cote Roofing Corporation, East St. Louis, Ill., merged with the American Asphalt Roof Corporation, 1925.

2. Beaver Products Company merged with Certain-teed Products Corporation, 1928.

3. Lockport Paper Company merged with Beckman-Dawson Roofing Company.

4. Murphy-McEwen Company merged with Beckman-Dawson Roofing Company.

5. Beckman-Dawson Roofing Company merged with Flintkote Company.

6. Chatfield Manufacturing Corporation merged with Flintkote Company.

7. Pioneer Paper Company merged with Flintkote Company

8. Richardson Roofing Company merged with Flintkote Company.

9. Sall-Mountain Company, Scranton, Pa., merged with Flintkote Company, 1929.

(*) Ibid

(**) Report of the Administration of the Code of Fair Competition for Asphalt Shingle and Roofing Industry. Letter of transmittal to F. J. Patchell, Assistant Deputy Administrator from Smith Simpson, Agent for the Code Authority. (In NRA Files, Code Authority Folder)

10. Weaver-Henry Corporation, Los Angeles, Calif., merged with Johns-Manville.

11. Amalgamated Roofing Company, Chicago, merged with the Logan-Long Company.

12. McHenry-Millhouse Manufacturing Company of New York, Inc., Fulton, N. Y., merged with the Logan-Long Company.

13. Continental Roofing Mills merged with the Ruberoid Company.

14. Safepack Mills merged with the Ruberoid Company.

15. F. F. Watson Mills merged with the Ruberoid Company.

16. McHenry-Millhouse Roofing Corporation, of South Bend, Ind., merged with United States Gypsum Company.

17. SiFo Products Company merged with the United States Gypsum Company.

18. Star Roofing Company merged with the United States Gypsum Company, 1934.

It is possible that there were other mergers and consolidations during the period which are not recorded. In 1928 Flintkote effected a combination with Royal Dutch Shell whereby the latter company acquired a majority of the voting stock of the former.

From the above it will be seen that Flintkote, aside from the combination with Royal Dutch Shell, acquired seven (7) companies; Certain-teed, one (1); John-Manville, one (1); Logan-Long, two (2); Ruberoid, three (3); United States Gypsum Company, three (3); and American Asphalt Roof Corporation, one (1).

Other alignments of interest, which did not necessarily take place during this period, are Barrett Company with Allied Chemical; The Texas Company (Texas Oil Company) and the Barber Asphalt Company, a subsidiary of the General Asphalt Company.

These combinations and mergers may have been a result of the tendencies toward combinations which were apparent late in the 19th and early in the 20th centuries in other lines of industrial endeavors and may have been stimulated by desire to reap the benefits of the internal and external economies of large scale production. There is no doubt that they resulted in both vertical and horizontal integrations, an example of the former type being the Flintkote Company which, through its closely held affiliates, carries on a business varying from the sale of raw materials, such as asphalt oil (a residue of refined petroleum), to the finished product, roofing paper and

shingles. Certain-teed furnishes a good example of the latter type manufacturing asphalt shingles and roofing, tarred and asphalt felts, building and insulating papers, newsprint paper and boxboard, paints and varnishes, gypsum, plasterboard blocks and plaster laths, and Kalite sound-absorbing plaster.(*)

(*) "Asphalt Shingle and Roofing Industry: A Study of Some Factors Bearing upon the Industry," James E. Gates, Consumer's Advisory Board, p.3.
(In NRA Files, Asphalt Shingle and Roofing Industry, Folder, Legal Code Authority)

III. THE ASPHALT SHINGLE AND ROOFING INSTITUTE, 1928

Despite the plan of enlightened competition under which the Association had been operating, at least since 1926, the Industry was still beset by the vicissitudes of price wars, secret rebates, fluctuating discounts and the like, and it appeared that further steps were necessary to eliminate these evils. The filing of prices and the dissemination of price information to members of the Industry had not proved to be a panacea.

A meeting of the members was called for May 29, 1928, at the Commodore Hotel. The exact purpose of this meeting is in doubt. One attendant stated under oath that prices were discussed and that a formula was advanced for determining prices on non-patented products based on the minimum prices of patented products as fixed by Flintkote.(*) That prices and pricing practices were receiving the attention of the assembled group is indicated by subsequent events. On June 14, 1928, the Constitution and By-Laws were adopted and the name changed to the Asphalt Shingle and Roofing Institute.

A. Institute Activities

It is reasonably certain that this reorganization heralded a strengthening of the bonds of industry organization and the further intensification of the enlightenment of competition. The activities of the association were continued and the scope of operation broadened.

During this period a Merchandising Plan was adopted by the Institute which established a complex system of customer classification, divided the country into shipping zones (determined by location of factories, warehouses, etc.) and adopted the principle of freight equalization as a basis for quoting and selling. The rules thus adopted by the Institute were to govern all members in the marketing of their products. Either because of fear of the consequences, conscientous objections or failure of the plan to conform to their established merchandising policies, some of the former Association members refused to become affiliated with the new organization.

It appears to be advisable before going deeper into the new order to review the May meeting. The pricing formula advanced at that time was proposed by Mr. Bonney of the Ruberoid Company and established a ratio between price and dimensions of shingles. By applying this ratio to the units of area of non-patented products there would be derived a gross price which would vary with the minimum prices quoted on patented products. Under this scheme control of the prices of all industry products would be vested in the owner of the patent, who was allowed by virtue of patent rights to determine the minimum prices at which such products could be offered for sale. (**)

At the conclusion of this meeting it was agreed that this method of price determination should be adopted. Mr. Bryant, Manager of the Institute, then cautioned the members that the revised price list

---

(*) Patent and Licensing Corporation v. Weaver-Wall, Testimony of A. L. Wall. Transcript of Hearing pp.1120 and ff.

(**) Patent and Licensing Corporation v. Weaver-Wall, pp.1123 and ff.

should be spread over a period of two or three weeks but could be made retroactive as of that date.(*)

The new organization continued the plan of price filing which had been begun by its predecessor whereby each member filed 80 copies of his price lists with the Institute, which in turn sent a copy to each member. If a change were made in any list, the manufacturer, in addition to sending the required number of copies, notified the secretary, who in turn notified each member of the change. Thus in addition to receiving copies of their competitors price lists, members had particular notice of any price fluctuation.

1. Merchandising Plan

The above discribed procedure for price filing did not introduce any novel plan to the Industry but, with the adoption of the Merchandising Plan, tended to strengthen as well as broaden the scope covered by price filing. The specific provisions of the plan will be discussed later in connection with the Merchandising Plan of 1929(**). The essential difference between this plan and that of 1929 was that the latter included a liquidated damage agreement under which each member of the Institute posted a bond in the amount of $100,000 to grarantee performance. The new plan did not greatly improve conditions. Though the members did file their prices and though customers were classified and terms and conditions of sale were set forth, there was no provision in the agreement that insured observance of these prices, classes and terms. Price wars, either secret or open, continued throughout the year and early in 1929 some of the members of the Institute began to visualize an even better regulation.

(a) As Amended in 1929

Had the plan of 1928 been observed it would have no doubt solved the problems of the Industry. Price determination would have been vested in the Patent and Licensing Corporation which could be depended upon to care for the interests of individual members. The one weakness of the program arose not from its provisions but from the fact that there was no penalty for failure to observe its terms. A survey of prices (***) will show that immediately following the May meeting prices jumped roughly 11.5 per cent and for a time remained both uniform and constant. Eventually some member of the Industry, motivated, no doube, by selfish interests, began to violate the agreement and the Industry was again thrown into a price war.

That it was a matter which demanded the attention of the 'master minds' is evidenced by the numerous meetings which were held in 1929 to remedy the situation.(****)

(*) Ibid., p. 1237

(**) Infra. p. 506 & ff.

(***) Infra, Table 3, p. 570.

(****) Patent and Licensing Corporation v. Weaver-Wall, p. 1112

The guiding influence in this movement is unknown. Among those named as "officers or directors, and or active in the management of the defendant Institute", in the suit filed by the Government were executives of the larger members of the Industry. According to the records seven meetings of the executives of the various companies were held in the fall of 1929 (*)

The plan was approved November 1, 1929, and was to become effective January 1, 1930, to remain in effect until December 31, 1932. (**) At the time that the Merchandising Plan was adopted, the members of the Institute entered into an agreement that provided: that each member would file prices; that when any change of any price to any one or more customers, in any district, was made, the member making the change should publich a printed price list containing such change to all the trade concerned, and simultaneously therewith a copy should be sent to all signers of the agreement through the office of the Institute; that each of the parties agreed to observe all the agreements, covenants, conditions and stupulations in the Merchandising Plan and the Code of Ethics; that each party agreed that no salesman, district manager, sales manager or other employee had a right ot deviate from the published prices; that cases of alleged violation would be submitted to an arbitrator,,who might at his discretion disregard the legal rules of evidence; that the findings of the arbitrator should be binding; and that each member should post a bond of $100,000 to assure adherence to the plan.

The Plan itself classified the customers of the industry in twelve divisions, namely; Dealers, Line Yard or Chain Store Concerns, Reserve Supply Companies, Authorized Distributors, Jobbers, Interstate Industrial Consumers, Intra-State Industrial Consumers, General Consumers, Railroads, Railroad Equipment Companies, Mail Order Houses and City and State Governments. Each of these classes was defined in a detailed manner. At least two classes had to submit data on sales to be approved by Bradstreet to support their contention for such classification, this latter rule applying to the Jobbers and Mail Order Houses. It was intended that the information supplied by the firms desiring to be classified as Jobbers and Mail Order Houses would be supplemented by information gathered by Bradstreet through their regularly employed field force. At least three of the other classes of customers had to submit a data sheet attested to by members of the firm that they fell within the desired classification. The determination of Bradstreet was to be final. It was their duty at the conclusion of the investigation to notify the manufacturer submitting the name as to their decision and at the same time to notify the Institute of the dicision made and the name of the manufacturer in whos behalf the investigation had been made. The names of the accounts approved by Bradstreet were compiled into an alphabetical list by states and distributed to the participating manufacturers, not indication the manufacturer whose application resulted in the approval.

(*) Ibed, p. 1112

(**) Bill in Equity No. 57-162, U.S. v. Asphalt Shingle and Roofing Institute, Et. Al., Pane 18 and 63.

In addition to the classification of customers, the Merchandising Plan considered Handling of Orders, Quotations For Periods Beyond 30 Days Terms of Payment, Datings, Back Orders, Allowances For Fixtures, Roll Roofing of Irregular Footage, Shingle Stock in Roll Form, Mill Ends and Seconds, Definition of Types of Shipping Points, Definition of Classes of Shipments, Allowances For Freight Equalization, Description of Factory Zones, F.O.B. and Freight Equalization Points, Discounts on Purchases and Qualifications for Discounts. Since space does not permit a detailed discussion of these various provisions, an attempt will be made to explain those which are most pertinent to the pricing structure of the industry.

Terms of sale were fixed at 2% ten days, 30 days net; or sixty day trade acceptance with no cash discount; or 2% 10th proximo, net 30 days proximo. For the purpose of freight equalization, shipments were classed according to amount, source of origin and agency of transportation and the amount of freight which could be allowed varied with each class or combination of classes. Thus it may be that delivery would be made free or that there would be no allowance regardless of destination.

With the thought that both clarity and brevity can be best served, let us take for example an unknown buyer X, requesting quotations from an unknown manufacturer Y. The matter of discounts and amount of freight equalization allowed need be of no concern, as they were fixed for each of the classes. It would first be necessary to determine in which of the six customer classes X falls; if he were a dealer (Reserve supply or Line Yard) or Distributor one discount would apply; a Jobber, another; a Mail Order House, still another; and so on for each of the classes. After the classification had been determined, the discount applies automatically. It should then be ascertained how the shipment was to be made, i.e., by rail, water, truck or a combination of rail and water; and finally the zone in which the customer resided. On these factors the amount of freight equalization was determined. Truck shipments fell in a special class and not only was no freight allowed, but the discount, for some unknown reason, was reduced 2½%. As in the case of discounts, the allowance is fixed and the customer falls automatically in one class or the other.

The Agreement also pledged each manufacturer to abide by and observe the twenty-six provisions of the Code of Ethics which in turn tended to strengthen the Merchandising Plan. The Code forbade the members of the Institute to evade the Plan secretly or by subterfuge. That is, one could not evade the price provisions by any of the following devious means: overweight merchandise; consignments; free goods; fictitious invoices; warehousing for customers; etc., any of which would be a means of increasing the discount or lowering the list price. In addition the Code stated that one should not make remarks to the disparagement of a competitor, entice a competitor's personnel, etc.

With the approval of the agreement and the Code of Ethics, its adoption was make the sole basis for membership in the Institute. By adoption is meant the signing of the Agreement and the Bond.

2. Relationship of Patent and Licensing Corporation

In order to complete the picture, it is necessary to again turn our attention to the Patent and Licensing Corporation. It had been estimated at various times that from 60 to 75 per cent of the products, of the industry were patented. Thus the control of patents, especially when that control is vested in the hands of the largest single producer in the Industry, might be a very important matter.

The exact degree of interrelationship between the Institute and the present corporation is difficult of determination. Chester E. Rahr was president of both organizations as well as president of the Flintkote Company. That the Patent and Licensing Corporation was of the opinion that there was a common interest is less uncertain. Patent control was sometimes used as a whip along with threats of price wars to coerce members the Industry to accept the Institute Plan. (*)

No agreement was necessary to put the Merchandising Plan into effect with regard to patented products. The licensor, by virtue of his patents, could and did determine the minimum price at which goods could be sold, and in determining that price, the same classification of customers, discounts and basis for freight equalization, as used by the Institute, were employed.

Thus by means of the two agencies, the Institute and the Patent and Licensing Corporation, there was a double control of the members of the Industry.(**) The Institute, through the bonds made in its favor, might demand a penalty up to $100,000 per year for violations of the Merchandising Plan and the Corporation by means of its control of patents might refuse to license or might sue for damages as a result of an infringement by the licensee. It would seem that the more potent of these weapons was the latter. An estimated 65 per cent of the volume of business of the Industry was in patented goods and prohibition from this field would vitally affect the source of revenue of the individual members.

B. Position Under the Anti-Trust Laws

The agreement and bond went into effect January 1, 1930 and was revised as above discribed April 1, 1930, The revision resulted in no material changes, therefore it is felt that the description needs no alteration to cover the period from January to April.

Soon after its adoption, the plan was called to the attention of the Department of Justice and after some preliminary investigation, proceedings were started against the President of the Institute, twenty-three member concerns and against eighteen individuals who were officers or directors and/or active in the management of the Institute. The Bill in Equity, No. 57-162, filed in the District Court of the United States for the Southern District of New York, entitled " United States

(*) Ibid, p. 1077.1082, and 1117.

(**) See Chart, p. 570.

of America, petitioner, v. Asphalt Shingle and Roofing Institute, et al., defendants", charged that the defendants since January 1, 1926, had combined to restrain trade. The charge read as follows:

> "Defendants, each well knowing all the matters herein before alleged, unlawfully have engaged in a combination and conspiracy to restrain, and pursuant thereto have actually restrained throughout said period, and are now restraining said interstate trade and commerce of defendant manufacturers and their customers by various means and devices, among them being the following:
>
> (a) Defendants have agreed to fix and have concertedly fixed and maintained uniform and non-competitive selling prices, uniform and non-competitive discounts for the various classes of trade and types of purchases, uniform, artificial and non-competitive charges on account of freight rates or the cost of transporting regardless of the point of the shipments, and uniform and non-competitive terms, extra charges allowances, and conditions of sale, etc.;
>
> (b) Defendants have agreed to definitions for and have concertedly defined the various classes of purchasers and have concertedly and arbitrarily chosen the names of the customers which may be recognized by defendant manufacturers in the various classes and which may be allowed the discounts and terms concertedly fixed for the prospective customers who had previously been or ordinarily would be treated as being in particular classes and as entitled to prices and terms accordingly, were thus unwillingly placed in less favorable classes and were forced to purchase said products only upon more inerous terms and at discriminatory and unfair prices;
>
> (c) Defendants have arbitrarily agreed upon and concertedly fixed the credit qualifications of customers necessary to permit defendant manufacturers to deal with such customers as members of the various classes of trade, and have concertedly and arbitrarily chosen the persons and concerns deemed thus qualified. Pursuant to such plan defendants have agreed to refuse and have refused to extend to many customers credit which they had enjoyed and would ordinarily enjoy in a free market;

(d) Defendants, through the Institute have concertedly maintained and operated a system for the exchange of complete schedules of all prices, terms and discounts proposed to be charged by each defendant manufacturer; as a part of said system they have agreed that no such defendant may deviate in any instance from its published schedule unless it shall forthwith publish to the trade and send to the other defendants a printed price list containing such changed prices;

(e) As a means of coercing and compelling defendant manufacturers to perform the agreements above described, the various defendant manufacturers have agreed that an arbitrator shall hear and determine all complaints for the breach of said agreements and may make any award therefor up to $25,000 for a single breach. Pursuant to agreement defendant manufacturers have executed and filed with the Institute surety company bonds in amounts ranging from$25,000 to $100,000 to secure the performance of said agreements and the payment of said awards;

.....

The purpose and intent of defendants in entering into and performing said conspiracy and each of the said acts and agreements, and the actual effect of each of the said acts and agreements have been unreasonably and unlawfully to restrain said interstate trade and commerce, to stifle and eliminate virtually all competition therein and arbitrarily and oppressively to control the course of such trade and commerce and unlawfully regulate the channels of distribution thereof."

Since the above litigation was never prosecuted to a conclusion, it may be cited only as evidence of the alleged activities, rather than proof. The case was carried on the docket until October, 1935, at which time it was removed without prejudice to the cause of the Government. The reason for the discontinuance may be partially attributed to the NRA, since Price Filing Activities were made legal by this Act and the Department of Justice felt that an attempt to gain a conviction would be futile. The cessation of litigation should be accepted in the same light that it was granted; it did not indicate a weakness in the Department of Justice's cause of action nor may it be inferred that it acted in the nature of an absolution of the alleged conspirators.

That there was a combination in the Industry is indicated by the pooling of patents and turning the control and administration of rights arising thereunder over to Flintkote or the Patent and Licensing Corporation. Thus patents, wholly or partially owned by Certainteed, Bird & Son, F.R. Brydle and one Ott were placed in the hands of the patent corporation to be administered by that firm. Whether or not this combination was in restraint of trade could only be determined by

the prosecution to a conclusion of the above suit or one of a similar nature.(*)

C. Validity of Patents Questioned

1. Patent and Licensing Corporation v. Weaver-Wall

Doubt has existed for some time as to the legality of the control arising out of patents. This doubt has extended to both the right to so control prices and the validity of the patents under which this control is exercised. Mr. H. C. Hoffert, for twelve years associated with Certainteed and the Lehon Company, raises the Latter question his article "IS THE PATENT AND LICENSING CORPORATION A PRICE FIXING AGREEMENT FOR THE ROOFING INDUSTRY?". This article traces the history of the patents on "Overbury Square-Butt Strip Shingles" and concludes that the patent expired in 1932. Since that date no new patent has been taken out on this product but the Patent and Licensing Corporation continues to control its minimum price.(**)

As has been previously intimated, the possibility of attacks on the validity of patents was always at a minimum. The licensee may not question the authority of the document from which he derives his privileges and the individual, not directly effected by such rights, seldom is sufficiently interested to raise such a quention. Despite these immunities, the irrefragability of the power assumed by the licensor has been questioned at times. Unfortunately, these cases infrequently have been prosecuted to a conclusion and when they have been, the decision has in most instances been rendered on some point other than the authenticity of the authouity under which the control was being exercised. Since the licensee connot raise an issue on a patent under which he is operating, these actions have generally raised the point of infringement rather than the seemingly more important question.

One of the more significant of these suits, primarily from the point of time during which it was transpiring, was that of Patent and Licensing Corporation v. Weaver-Wall. As in other litigation, the issue was reached on encroachment, but a portion of the testimony had to do with the efficacy of the right under which the plaintiff was claiming. The point of attack was that the idea was not new in the Industry at the time the patent was granted, and that prior to that time the phenomenon protected had been generally used throughout the Industry. While the decision of the court in that case, as to the immediate question of validity, is not available; in its more far reaching aspect, that of the legality of the Institute's activities, the decision is quite definite. In his decision the Master held that the Institute Members were guilty of a conspiracy in restraint of trade and had violated the Sherman Anti-Trust Act, the Clayton Act and the Valentine Act of Ohio.

(*) Patent and Licensing Corporation v. Weaver-Wall. Testimony of Frank Gilchrist. Transcript,p. 170 and ff.

(**) IS THE PATENT AND LICENSING CORPORATION A PRICE FIXING ARRANGEMENT FOR THE ROOFING INDUSTRY? H.C.Hoffert. (In NRA Files, Volume B, p. 86)

CHAPTER II

THE INDUSTRY IN 1933

I. SIZE OF THE INDUSTRY

The Administrator, in his letter of transmittal to the President, November 1, 1933, stated that the report of the Research and Planning Division showed 65 establishments operating to a greater or lesser extent and that the capital investment of this industry was fifty-seven ($57,000,000.00) million dollars. (*) Both of these estimates are at variance with the estimates submitted by the sponsors of the Code.

A. Number of Members.

In the data submitted with the application for a Code, the Asphalt Shingle and Roofing Institute, the sponsoring organization, stated that there were 27 members of the industry, 18 of which were members of the organization. (**) It is felt that with the possible exception of a few companies on the West Coast, which operated as a separate body, this is a reasonably accurate estimate. It may be reconciled with the figures of the Research and Planning when it is noted that these 27 members operated in the neighborhood of 70 plants.

B. Relative Size of Members

The size of these 27 members of the Industry ranged over a considerable expanse from the point of view of capitalization, from a high of around fifteen ($15,000,000.00) million dollars to a low of less than twenty-five ($25,000.00) thousand dollars. Though the range was great, it is possible to arrange them in three groups without great distortion of the picture. Six of the companies fall within a group which might be classified as large, ranging in capitalization from ten ($10,000,000.00) million dollars upwards; eleven come in the intermediate or medium sized group with a capitalization of between one ($1,000,000.00) million dollars and ten ($10,000,000.00) million dollars with the point of concentration being somewhere around a middle figure; and ten companies may be classified as being small, having a capital of less than the low figure of the intermediate group.

Production of industry products does not always follow capital invested. This is due, in part, to the fact that the larger companies are generally engaged in the production of commodities other than those included in the Code definition. Regardless of this dispersion in the ratio between capital invested, it can safely be said that roughly 50 per cent of the total sales are made by the six larger members of the Industry. It had been estimated that one member produces somewhere between 17 and 24 per cent of the total, that same member controlling through patents about 65 per cent of the total Industry production. Sales in most instances, during the period of 1926 to 1931, approached the capital

(*) See letter of transmittal of the Code for the Asphalt Shingle and Roofing Industry, Codes of Fair Competition, Volume II, page 525.
(**) Volume A, pages 4-7 (In Code Record Files)

invested, indicating that the Industry could operate on a very small profit margin and at the same time show a fair return on the investment.

II. GEOGRAPHICAL DISTRIBUTION

Due to the fact that freight is a rather important item in the cost to the consumer, notwithstanding the freight equalization plan practiced by the Industry, the factories are concentrated in sections of dense population. Thus from a total of 76 establishments, 18 are located in Illinois, 9 in New Jersey, 6 in Pennsylvania and 4 in New York, the remainder being distributed among 19 states primarily in those regions which show a high ratio in population per square mile. In those instances where an establishment is found to be remotely located, it is generally true that it is a small individually owned plant which operates within a restricted area.

It is not intended to indicate that sales outlet alone determines the location of a factory, for the accessibility of raw materials is likewise an influential factor. The principal raw materials used in the making of asphalt shingles and roofing are asphalt oil (a residue of refined petroleum), waste felt (rag and paper), coal and mineral granules. Peculiarly enough, many of these necessary materials are available in a proximity of the principal markets for the finished products. The refineries of Pennsylvania, Ohio and New Jersey would furnish the by-product of petroleum; the wastes of the cities would provide the necessary ingredients for waste felts and the coal regions of Ohio and Pennsylvania would make readily accessible the element of coal tar. Thus, as a result of the two determining factors, we find the establishment of the Industry concentrated in rather well defined logical regions. It is probable that without the availability of the principal raw materials there would be no great change in plant location as the finished product is more bulky and consequently more costly to ship than the raw products used.

III. PRODUCTS AND PROCESSES.

The Industry products as defined by the Code are "felt-base (made of organic or inorganic fibres) asphalt shingles, sidings and roofings, roll roofings (including cap and base sheets and house sheathing), starting strips, tarred felt, and asphalt felt."(*) In the Code there appears a comma after the first parenthesis which was put in by error and was never considered as being in the definition. The commodities, manufactured by members of the Industry, which were not included in the Code list are both numerous and varied. To name all such items would be a laborious task. A number of the concerns produce such kindred products as felts of one kind or another and a few of them furnish a sizeable proportion of asbestos. One member of the Industry operated under seventeen Codes and produced such unrelated commodities as newsprint and paint. In most instances, however, there is a closer relationship and one or the other of the products might logically be called a by-product of the other.

(*) See Article II, Section 6 of the Code for the Asphalt Shingle and Roofing Industry, Codes of Fair Competition, Volume II, page 527.

It is necessary to concern ourselves only with the processes involved in the production of the commodities classified as Industry products, i.e., asphalt shingles and roofing. The base material used is the felt, either in rolls or sheets. This material is first saturated with asphalt oil by dipping or spraying and is then coated with some mineral granule. To get the various and variegated colors it is necessary that the pigments be mixed with the saturating or coating materials and applied before or with the coating. Both the roll roofing and the asphalt shingle is made in this manner. The shingle is, however, carried through another step and cut either individually or in strips. Though to the layity it may seen to be a matter of relatively little importance, the direction in which the fibre runs in the finished shingle is, apparently, of some significance, for questions of patent infringement have been determined on this factor.

The necessary processes are highly mechanized, and the number of employees has a very loose relation to the total value of the products. In 1919 the Industry employed 8,871 wage earners while producing products valued at $85,895,000, while in 1929 it required only 8,310 wage earners to produce goods valued at $123,000,000. From 1919 to 1931 the percentage of the total costs which went to labor decreased in a rather constant degree from 12.1 to 9.0

Perhaps there is some correlation between the mechanization in production and the degree of standardization in Industry products. Whether the relationship is one of fact or not, there is a very high degree of uniformity in appearance and in materials. So great is this standardization that frequently you will find, for example, a distributor of the Mail Order group buying Private Label goods from two or more producers at the same time and merchandising them as the same identical product. Or perhaps one shipment of merchandise from that type of outlet will include the products of several manufacturers. Another factor contributing to this similarity is the influence of the Association of Fire Underwriters which has set up minimum standards for roofing materials. That this standardization is not entirely a matter of chance or a development thrust upon the Industry is attested to by the fact that the Institute has for some time maintained a chair for study and development in the Bureau of Standards.

IV TYPES OF DISTRIBUTION

As was pointed out in the discussion of the Institute Merchandising there have been for some time, within the Industry, rather well defined channels of distribution as well as some equally well defined favored consumer groups. (*)

It was likewise pointed out at one time these channels had been specifically defined and the applicable discount to each group had been fixed.

(*) Supra, page 506 and FF

Subsequently the definition was continued but observance of the stated qualifications was no longer mandatory; however, it was necessary in cases of non-obervance to give full publicity to the deviations. There are no indications that such divergences were either numerous or widely publicized.

For the purposes of discounts the customers were divided into six classes, namely: Dealers (including Reserve Supply Companies, Line Yards and Authorized Distributors), Approval Jobbers, Mail Order Houses, Railroads and Railroad Equipment Companies, Intrastate Industrial Consumers (also City and State Governments), and Inter-State Industrial Consumers. A different discount was granted to each of these groups of customers and within the group a quantity discount was applicable. Though no attempt to justify these classifications was made in the Merchandising Plan, it is logical to assume that the differentials recognized both the services performed and the desirability of the outlet, as either a means of merchandising the products or as a potential market for the products.

To qualify as a Distributor, it must be shown that the firm or individual has purchased during the past year a specified quantity of merchandise and has purchased a lesser specified quantity from one manufacturer. The preferential discount then applied to anticipated total purchases and was not directly related to the present oder except as to the difference between C.L. and L.C.L. prices.

For each of the other members of this discount group, there was rather well defined requirements relating to functions or types of services performed, but since the group as a whole occupied the position of least consideration and since, supposedly, any purchaser purchasing in a like quantity was eligible for the same discount, they hardly merit a detailed description.

To be a Jobber, one must be listed in some registry or recognized in his local community as a wholesaler, must maintain at least two salesmen who are engaged primarily in soliciting orders, must have a credit rating sufficient as to indicate financial responsibility, must maintain a stock of not less than 40,000 pounds of asphalt roofing products and must sell at least 50 per cent of his entire turnover to retail dealers. In lieu of the two salesmen, the Jobber must sell 100 per cent of his entire turnover to retail dealers. The testimony or evidence offered by the prospective Jobber was of little value in the final determination as the matter was turned over to Bradstreet for investigation and upon the findings of this company, the prospect qualified or failed to qualify. About 1931, these functions were taken over by the Flintkote Company as affecting patented products and as affecting non-patented products when shipped with patented ones.

The procedure for Mail Order House was much the same as that for the Jobber, in that the final determination was vested in the hands of Bradstreet, and from their opinion there was no recourse or appeal. Peculiarly, these firms fell in the most favored group so far as the amount of discount was concerned, in spite of the fact that their sales amounted to only 5 to 6 per cent of the total sales

of the Industry; whereas the lumber dealers who handled roughly 70 percent of the total industry sales, fell in the least favored class.(*)

The other classification includes large potential users of the Inudstry's products to whom are extended discriminatroy discounts for no other reason, apparently, than that they do offer a market for large quantities of the commodities.

V. NATURE OF THE MARKET

The Industry is entirely dependent upon construction as a market for its products, and more particularly it is dependent upon the building division of that industry. As has no doubt been assumed from the name, the primary commodities are roofing materials, though a small part of the products are used for building siding and for waterproofing or damp-proofing basements.

A. New Building

By far the greater part of these materials is for application of new structures, and the consumption of the individual product depends upon the type of the structure, i.e., residential, commercial, industrial, etc. The total demand for the products of the Industry does not show this same relation to types. Whether shingles, rolled roofing or tarred felts are used is based principally on the shape of the roof and its visibility, In residential structures the roof is generally visible, unless the type of architecture happens to be Spanish or of some other style which calls for a hidden or semi-hidden roof. In the latter case, the selection is apt to be of the plainer type which calls for either rolled roofing or built up roofing, whereas in the more visible styles are more frequently used. Likewise the roofs of the commercial or industrial buildings are of the flat type, in which cases the esthetic makes less appeal and practability is the determining factor. Consequently, the demand for the various products of the Industry is susceptible to fluctuations which effect the demand for the individual product as well as to fluctuations of the demand for the total. Due to this degree of the dependency upon the construction field, the demand for the products of the Industry is both seasonable and cyclical.

While the market for the products is almost entirely determined by the construction industry, it does not necessarily follow that the demand will vary directly with the total amount of new building. The life of the average asphalt roof depends to a considerable degree upon the per unit weight of the roofing used. It may safely be said however, that it runs from seven to ten years (some companies offer a guarantee for a longer period of time). The life of the average house being the excess of this period, it is obvious that each structure already in existence affords a potential market for such roofing this including also structures which were originally covered with some other type of roofing.

(*) Transcript of Hearing, page 137 Sept. 21, 1933

VI. COMPETITION

In marketing their products, the members of the Industry are forced to compete with at least four well established industries. In no instance have the relative merits of the respective products been determined with sufficient definiteness and certainty to furnish a guide for the consumer. That one form or type of roofing is more durable or is more resistive to fire or is more attractive is largely a matter of personal opinion or taste, and no one except the members of the groups has offered a conclusive opinion on any of these factors, and in those instances conflicting opinions are numerous as their advocates. Since the laity has no guide other than the advice of interested parties, the market limitations are determined by the comparative sales abilities and the total possible demand, both of which are uncertain.

In making the final determination between the competing materials, the consumer without any measure must roughly estimate the respective virtues and discount the relative deficiencies and then make a guess as to which would be preferable. Under such conditions it is possible, from the point of view of the manufacturer, that an industry organization might render its most meritorious service, for under these circumstances it might be advantageous to combine against the enemy to the benefit of the industry in general.

VII. PRODUCTION, COST AND PRICE TRENDS

Both production and productive capacity from the beginning of the Industry down to and including 1929 showed a rather constant increase. There were periods during this time when there were temporary decreases in production, but even these momentary retardations rarely reached the productive capacity which has constantly increased to the present.

Data are available for both the shipments in squares per year as furnished by the Industry (*) and the value of products as furnished by the Department of Commerce. (**) In view of the fact that the latter figure would not depict the changes in production except when accompanied by no change in price, the shipment data are thought to be of more value at the present instant.

(*) Materials Bearing on the Asphalt Shingle and Roofing Industry, prepared by the Research and Planning Division, page 6. (NRA files)

(**) Census of Manufactures, 1929, page 1349.

Year	Shipments (thousands of squares)	Per cent change from preceding year
1919	27,935	1.3
1920	28,322	1.3
1921	26,159	-7.6
1922	30,495	16.6
1923	30,499	0.0
1924	32,571	6.8
1925	33,730	3.6
1926	36,303	7.6
1927	37,975	4.6
1928	36,540	-3.8
1929	39,861	9.1
1930	27,874	-30.1
1931	22,565	19.0
1932	23,023	2.0

Shipments include smooth-roll and slate-roll roofings and strip and individual shingles. (*)

It will be seen from these figures on shipments that while susceptible to fluctuations in the building trade, members were able to delay the effects and recover more rapidly than the industry from which their demand came. Data on building permits for comparable periods show a constant decline from 1926 through 1932 and a decrease between the last two years, 1931-1932, of 65.7 per cent. (**)

The only available figures on the cost of production are those of the Census of Manufactures which show the amount for wages and cost of materials (including fuel and purchased electrical power). These figures do not permit a determination of value only and are not comparable to the above data on shipments. The percentages such costs were of the value of products are shown in the following table: (***)

(*) Materials Bearing on the Asphalt Shingle and Roofing Industry, prepared by the Research and Planning Division, page 6, (In NRA files)

(**) Ibid.

(***) Based on Data of Census of Manufactures, page 1349.

Year	Per Cent Labor and Materials of Value of Product
1929	68
1927	63
1925	66
1923	79
1921	70
1919	73
1914	72
1909	71
1904	70
1899	69

The above data indicated that, compared with the value of the products, costs rose from 1899 to 1923 and have been decreasing since that date.

A. Compared With Competitive Industries

More interesting, from the point of view of this study, is a comparison of production and price trends with similar movements of the competing industries. Data are available for making such a comparison with wood shingles, slate roofing and clay tile roofing. These figures reveal the fact that members of the Industry were able to maintain both price and production more advantageously and were able to recoup more rapidly than were the competing groups. More startling is the ability to maintain and even increase prices during a period of falling demand. Under conditions of free and open competition, the movement would be expected to be in the opposite direction, for in an attempt to increase demand the price level would fall, profits being maintained or the amount of losses being lessened by the increased volume. It will be seen from the chart that from the peak production of 1929, to the minimum production of 1933, Asphalt Shingles showed a decline of only 55.2 per cent and Roll Roofing only 41.4 per cent, while Wood Shingle production declined 65.5 per cent, Slate Roofing 70.3 per cent, and Clay Tile 72.1 per cent. The peak and minimum years did not always coincide but all took place during the period from 19 8 to 1933. During the same period the price fluctuations, as measured on a 1929 base, were as follows:

Commodity	Per Cent Decrease (Maximum) 1929 Base	Recovered to 1929 Base
Wood Shingles	51.1	81.7
Asphalt Shingles	0.0	116.0
Roll Roofing	3.7	106.0
Slate Roofing	43.5	None shown
Tile Roofing	33.5	None shown

It should be mentioned in connection with this analysis that only in the case of the Wood Shingle was the 1929 price high price, each of the other roofing materials showing a decrease from 1928.

Computations from the figures in the 1929 Census of Manufactures develop the fact that in that year, assuming consumption was in keeping with production, 73.6¢ of every dollar spent for roofing was spent for products of the Industry. The nearest competitor was the wooden shingle industry, which accounted for 13.9¢ of each roofing dollar. Indications are that at the present time there would be an even greater dispersion, the ratio of wood shingle consumption to prepared roofing shipments, since 1923, having been as follows: (*)

Year	Ratio of wood shingle consumption to prepared roofing shipments
1922	42.7
1923	41.2
1924	36.1
1925	37.5
1926	33.0
1927	30.6
1928	25.9
1929	24.1
1930	23.1
1931	20.3
1932	18.2

VIII. EFFECT OF THE DEPRESSION

Building as measured by building permits reached a maximum in 1925 when the value of such permits was $3,793,169,000 and from that date

(*) Red Cedar Shingles, Report of the U.S. Tariff Commission to the President of the United States, 1934. Table 16, page 60.

declined steadily to a level of $366,691,000 or 91.2 per cent. (*) It is quite certain that the minimum of building was not reached until 1933 although figures for that year are not available.

With the unprecedented decline in construction, it would be only logical and natural that the demand for roofing products would show a similar movement. There was, however, considerable variance in the point of time. Shipments of prepared roofing reached a high in 1929 of 39,861,000 and a low in 1931 of 22,565,000 for a total decline of 40.9 per cent. (**) As has been previously mentioned a portion of the demand for these products arises from repairs and replacements though it is extremely doubtful that this activity could account for all the difference. It appears likely that the competing industry must have suffered more severely and that the Asphalt Shingle and Roofing Industry must have profited at their expense.

This observation is supported by price movements of the Industry during the depression. Taken alone or in comparison with price movements of competing materials, prices seemed to have been maintained with surprising success. No doubt this unusual ability may be explained, in part, by activities of the Institute.

IX. PRE-CODE PROBLEMS

Despite the maintenance of prices and the seeming harmony, the granting of secret discounts, rebates and allowances caused much unrest among the members. In attempts to meet such special grants to favored customers or groups of customers, frequent price wars were precipitated and prices, at least temporarily, went skidding downward. The problem seemed to be more the possibility of these wars than an actuality, but without some method of compelling observance of filed prices, the members of the Industry were always conscious of the danger.

Another practice in the Industry, and which the members felt they were helpless to combat, was that of extending favorable prices to mail order houses. Such institutions accounted for a very small proportion of the total sales of the Industry, yet they at times occupied the most favored position so far as prices were concerned. Recognizing the problem, the members did not feel that they could either individually or collectively meet the issue unless there was some method of compelling adherence to filed prices.

(*) Material Bearing on the Asphalt Shingle and Roofing Industry, prepared by the Division of Economic Research and Planning, page 6. (In NRA files)

(**) Supra, page 518.

CHAPTER III

INDUSTRY PROGRAM FOR PRICE FILING

The National Industrial Recovery Act became law on June 16, 1933, and industries were asked to submit for approval plans devised to remedy the competitive evils of each particular group, at the same time including provisions to benefit labor. The general theory was that as a result of these proposals, not only would industry be rehabilitated, but, in addition, advantages would accure to the wage earner in the form of shortened hours and increased hourly wage rates.

That the Asphalt Shingle and Roofing Industry already entertained definite ideas as to the needs of their business is evidenced by the fact that little more than a month had passed before they had submitted a plan to the Administrator. For the purpose of negotiating with the Administration, a Code Committee was appointed by the Institute, consisting of the following individuals: (*)

Herbert Abraham, Ruberoid Co., Chairman
L. R. Hoff, Johns-Manville
C. W. Bayliss, Barber Asphalt Co.

It is probably worth noting that these men and their affiliates were all named as defendants in the Bill of Equity. (**)

It should have been a foregone conclusion that the plan submitted would include a provision for the filing of prices, terms and conditions of sale. The industry had been operating under such a plan since 1926 and since the suit of 1930 had been forced to operate without any measures which would compel observance of these principles.

I. PROPOSALS

The original proposal submitted on July 27, 1933, (***) provided that every manufacturer should publish (if not already published) his

---

(*) Resolution signed by P. C. Rowe
(In NRA files, Volume A, p. 77)

(**) Supra, p. 508.

(***) Proposed Code of Fair Competition submitted by Asphalt Shingle and Roofing Industry dated July 27, 1933, and letter of transmittal dated August 7, 1933, from Herbert Abrahams to Hugh S. Johnson.
(In NRA files, Volume A, p. 7)

prices, terms and conditions of sale to his trade concerned, each class of trade to be furnished with the applicable prices, terms and conditions. The manufacturer should thereupon file with the Institute for immediate distribution to the members of the Industry a complete schedule of all prices, terms and conditions of sale then in effect. This information was also to be kept on file at the Institute for inspection by any member of the trade or any manufacturer. In event any change was made in the price, terms or conditions of sale of any manufacturer, such changes were to be published within 48 hours thereafter and the member making the change was to file all such changes with the Institute coincidentally with the publication. (*)

Paragraph XXIV of that proposal noted exceptions to the requiremnets for filing in the following terms: (**)

> "The price publicity herein described shall apply to all prices, terms and conditions of sales of all asphalt shingles, asphalt roofing and allied products, except at terms, conditions of sale and other provisions contained in industry merchandising plan established herein under need not be published by the manufacturer, such plan being public document."

In regard to customer classification the following provision was incorporated: (***)

> "The names of all customers classified by manufacturing trade groups eligible to receive trade discounts shall be filed promptly in the proper office of the Institute under the trade classification designated by such manufacturer, and all names of customers so filed shall be compiled in the classified customers list and shall be open for inspection to the manufacturers and to the trade at the proper office of the Institute. Copies thereof, for the appropriate portions thereof, shall be furnished by the Institute upon application of any manufacturer or member of the trade to the proper office of the Institute in the same manner as provided with respect to price lists."

It is not indicated in this provision whether or not a manufacturer was to be permitted to change his definition of classes from time to

---

(*) It should be noted that the proposal at this time did not include a waiting period.

(**) See Proposed Code, Volume A, pp. 7-14.(In NRA files, Volume A)

(***) Ibid

time. There is no specific permission for such changes, but at the same time there is no prohibition.

In addition to these regulations governing price publicity and customer classification, Title 5, paragraph 23 empowered the Code Authority, through committees, to establish a Code of Ethics, a Code of Simplification and Standardization of Products and a Merchandising Plan. In the light of previous and subsequent discussions, it seems important to direct attention to the similarity of the trade practice provisions of the original proposal and the plan to which the Department of Justice objected. Granting that the merchandising plan which would have been adopted by the Committee would have been likened to that under which the Industry had previously operated, and this is not an unfair assumption, (*) and that the Code of Ethics would have shown the same relationship to the previous Code of Ethics, the Code would have reinstituted the plan of 1930, dispensing with the services of Bradstreet and the impartial adjudicator.

Just what transpired between the original proposal and the time of the public hearing is not a matter of record, but it is apparent that the proposal underwent considerable change. A five-day waiting period was included; (**) provisions were made for changes in customer classifications; and the empowerment of the Code Authority to establish a merchandising plan was delimited to power to study and recommend.

The Code submitted at the public hearing provided for publication of prices, terms and conditions of sale of all products to the trade concerned and the coincident filing in an office designated by the Code Authority for immediate distribution to the members of the Industry. In case of price changes, either of two alternative procedures might be followed at the discretion of the Code Authority: the manufacturer making the change might be required immediately to publish to the trade concerned every such change and coincidentally file with the Code Authority for distribution; or he might be required to file such changes with the Code Authority five days in advance of the effective date for immediate distribution to the members of the Industry

---

(*) See Merchandising Plan submitted, Infra, p. 548.

(**) It is possible that some of the changes were made in the light of the results of similar proposals made by other industries. In an interview on January 13, 1936, J.S.Bryant, Secretary of the Institute and former Secretary to the Code Authority, stated that the Industry had never been particularly enthusiastic about the waiting period but had included it in their demands because other industries had been granted such a provision.

and publish to the trade concerned on the effective date. The terms of the provision were as follows: (*)

"ARTICLE X - PUBLICITY OF PRICES, TERMS AND CONDITIONS OF SALE

"Section 1. Immediately after the effective date of this code, every member of the industry shall publish his prices, terms, and conditions of sale on all products, to his trade concerned, each class of trade being furnished with the prices, terms and conditions of sale directly affecting such class. The trade concerned shall be all the trade of the member of the industry directly affected by such prices, terms or conditions of sale in the territory to which the same apply. Coincident with such publication, every member of the industry shall file in an office designated by the Code Authority Committee, for immediate distribution to all members of the industry, a complete schedule of such prices, terms and conditions of sale. Prices, terms and conditions of sale in effect in the Pacific Coast Section shall be filed in a Pacific Coast Office designated by the Code Authority Committee.

"Section 2. In the event of any change being made by any member of the industry in any price, term, or condition of sale, he shall, as determined by the Code Authority Committee either:

"(a) Immediately publish to the trade concerned every such change and coincidentally file in an office designated by the Code Authority Committee full and complete copies of every such change in prices, terms and conditions of sale, for immediate distribution to the members of the industry.

"(b) File full and complete copies of every contemplated change in prices, terms, and condition of sale in an office designated by the Code Authority Committee within such periods as may be designated by the Code Authority Committee but not exceeding five days in advance of the effective date of any such change. Copies thereof shall be immediately distributed to the members of the industry. On the effective date of any such change the Industry member shall publish the same to the trade concerned and coincidentally file such information in the office designated by the Code Authority Committee for immediate distribution to the members of the Industry."

(*) Transcript of Public Hearing, p. 28. (In NRA Files)

The problem of customer classification was handled in almost the same language as in the proposal of July 27th (*), with no change in the meaning.

The uniform merchandising plan was not considered a matter which might be of interest to other than members of the industry and it was provided that the Code Authority might propose a Code of Ethics, a Code of Simplification and Standardization and a Merchandising Plan. Before being submitted to the Administrator for approval these plans were required to have the support of two-thirds of the members of the Industry located east of the Pacific Coast Section.

II PURPOSES TO BE ACHIEVED

In discussing the purposes to be achieved by the open price plan, it is probably wise to speak from the mouths of the proponents. In the letter of transmittal accompanying the original proposal, the Chairman of the Code Committee wrote as follows: (**)

> "In the year 1932 and in preceding years, many manufacturers in the asphalt, shingle and roofing Industry suffered serious losses. In order to enable the manufacturers in this Industry to make even a little profit and to carry out the purposes of the National Industrial Recovery Act it is essential, in our opinion, to stamp out vicious practices which have existed in the Industry causing price wars and cut-throat competition detrimental to the workers as well as to the manufacturers.
>
> We have, therefore, proposed in the Code an open price plan which expressly permits every manufacturer to fix and change his own prices at will, but requires him to publish to his trade and concern all prices and terms of sales effecting such trade, and after first publishing such prices and terms and rates then to file them in the office of the Asphalt Shingle and Roofing Institute, where they will be open to inspection by all members of the Trade and by manufacturers. Under this plan, the manufacturer may change his prices at any time without prior notice to anyone, but after change has been made he must publish the new price to his trade and file it in the Institute office. We earnestly urge the importance of an early approval of the publicity features of the proposed Code."

(*) Supra, p. 523.

(**) Letter dated August 8, 1933, from Herbert Abrahams to Hugh S. Johnson.
(In NRA files, Volume A, p. 7)

Further reference was made to the purposes of the price publicity features in both the first and second drafts of the Code, where it was stated: (*)

> The purpose of the publicity requirement of this Code is to insure to members of the industry to the trade concerned, complete publicity of all prices, terms and conditions of sale and thus promote fair competition. No member of the industry shall sell, pay rebate, or allow a deduction at any time to any person except upon prices, terms, and conditions of sale then in effect and published in the manner required by the Code. Each member of the industry shall have the right individually to publish new prices, terms, and conditions of sale, from time to time, not inconsistent with the provisions of the Code.

More specifically, it was thought that publicity would place the manufacturer in a position to refute the alleged prices which were quoted prospective customers in an attempt to drive a better bargain. Buyers, particularly those who purchased large quantities, in an attempt to secure a price advantage, would often quote a ficititious price alleged to have been offered by a competitor. When this price was met or a lower price quoted, this quotation would be used to drive an even more advantageous bargain with still another competitor, and so through a vicious cycle the price would be driven down. Continued over a long period of time this practice was apt to culminate in a general price war. It is also probable that publicity of prices, supported by governmental compulsion to force adherence, offered an opportunity to remove the mail order houses from their position of favored buyers, and this favoritism shown mail order houses was generally opposed by the members of the industry as being justified by quantities purchased.

In determining the real reasons why the Industry supported the measures one should recall the expressed purposes and reasons of the Institute in putting a similar plan in operation years before. (**)

(*) Transcript of the Public Hearing, p. 30. (In NRA Files)

(**) Supra, p. 504 & ff.

CHAPTER IV

CONTROVERSIES ARISING DURING CODE MAKING PERIOD

I. BETWEEN MEMBERS OF INDUSTRY

In making their proposals, members of the industry seemed to be in almost perfect accord. If any difficulty was experienced in determining just what would best solve the perplexities, such problems were ironed out without bringing them to the Administration. It seems logical to assume that there were no serious differences and that the members of the industry, in the light of their past experience, knew or at least had very definite opinions as to what would remedy the existing evils in their competitive system.

In only one instance is there recorded a lack of complete harmony regarding the proposals of the Institute. On September 13, the Western Elaterite Roofing Company wired the Institute that all references to a merchandising Plan should be eliminated from the proposed Code on the ground that they had not been worked out satisfactorily and that they were confusing. Five days later in a letter to the Administration the contents of the telegram was quoted and the suggestion again made that action on the plan should be deferred and the problem considered in a more deliberate manner at some later date.(*)

II. MEMBERS AND CUSTOMER GROUPS

The serenity which marked the consideration of the members of the industry was not so apparent when the Code was brought to the attention of the customer groups. Cries of discrimination and price fixing were the immediate reactions. At least three important customer groups protested vigourously the provisions relating to price filing and customer classification, each contending, for one reason or another, that if incorporated in the Code such provisions would react to the detriment of the particular group and ultimately to the consumer.

A. Lumber Dealers

The opposition of the Lumber Dealers was not crystallized until March, 1934, at which time the Merchandising Plan was up for consideration. The arguments advocated by that group will be discussed in connection with the proposed amendment. (**) It should be noted at this time, however, that in anticipation of such a proposal, the group protested the favorable prices extended to the mail order houses on the grounds that they were discriminatory and not justified on the basis of quantities.

B. The Roofing Contractors Association

The objections of the Roofing Contractors Association do not appear to have been at all times consistent with any particular economic theory, being primarily leveled at those provisions of the proposed Code which dealt with the filing of prices and trade classifications. In regard to

---

(*) Letter dated September 18,1933, from Edward J. Yetter to Assistant Deputy Administrator William Lawson. (In NRA files, Asphalt Shingle and Roofing Code, Volume A.)

(**) Infra, p. 548.

Article VIII (*) (Trade Qualifications) the criticism was advanced that the various classes of customers should be designated in the Code and that there should be provided some means enabling those who were assigned to each class to advance to more advantageous positions (**). The then Article X, now Article VII (***) was attacked on the grounds that the interchange of prices among members was tantamount to the establishment of price fixing. In advancing this criticism it was stated that (****):

> "Again, we are forced to be guided by past performances in attempting to determine the future actions of the industry. We have present in this room price lists issued by various members of this industry for the past few years. By a strange coincidence, although these price lists are dated usually only a few days apart, they invariably mention the identically same net price for each classification of material."

In general it was felt by this group that, since they were vitally connected with the industry, they should be consulted in the drawing up of any plan of fair competition.

C. Mail Order Houses

The Mail Order Association of America objected to the proposals requiring the filing of prices and customer classification on the theory that such information was confidential between the manufacturer and the customer. It was contended, further, that the requiring of data relative to sales and prices was requiring not only a disclosure of the manufacturers business, but also that of his clients, constituting a violation of confidence.

This Association expressed the belief that the Code Authority would be dominated by the larger firms, who were opposed to the mail order type of distribution, and that as a result of this domination the Mail Order group would be discriminated against in the matter of discounts. They further alleged that the larger or dominating firms would avail themselves of the information filed relative to the mail order houses in order to use it in combatting such institutions.

In response to this protest the Code Committee pointed out that "in spite of the fact that the total purchases of the primary mail order houses do not exceed 5% of our output, they have been able for many years to secure prices considerably below the level of the various other classes of trade." (*****) It was advanced by the Code proponents that this situation had led to wide-spread complaints from the other classes of

---

(*) Infra, p. 548.
(**) Transcript of the Hearing on Code of Fair Competition, presented by Asphalt Shingle and Roofing Industry, September 21, 1933, p. 71-81.
(***) Infra, p. 548.
(****) Transcript of the Hearing on the Code of Fair Competition, presented by Asphalt Shingle and Roofing Industry, September 21,1933, p.79.
(*****) Letter dated September 21, 1933, from the Asphalt Shingle and Roofing Institute to NRA. (In NRA Files, Volume B, p.4)

customers, since the mail order firms, as a result of this advantageous buying, could and did cut prices to the detriment of other distributors of the industry's products. Relative to the accusation that the Code Authority would be dominated by the large firms and as a result of that dominance would be prejudiced against the mail order houses, it was called to the attention of the Administration that each member would have one vote regardless of size and that there would be two representatives of the Administration on the body. It was further intimated that such an accusation was an affront to the integrity of the Code Authority and the Administration.

III. BETWEEN INDUSTRY AND NRA

Recorded objections of the Administration to the proposals of the code sponsors were not numerous. Concessions sought were no greater and no broader than had been previously granted other industries and definite policies had not yet been determined. Each proposal was supposed to stand on its own merits but unconsciously each code was viewed in terms of those already approved. From this perspective the demands of the proponents, while possible more definite than some, were no more exacting.

As measured by the changes in the proposed Code from the time of its first appearance (*) to the time of the public hearing, many concessions were made and many disputes settled. These alterations, though frequent, were in most instances directed to form rather than to content. Many of these changes were effected at a conference on August 31, 193[illegible], with Chairman Abraham of the Code Committee and Manager Bryant of the Institute. (**)

Following the public hearing the Consumer's Advisory Board took issue with the provisions for customer classification, waiting period and definition of costs. (***) This Board considered it undesirable to require the listing of customers according to classes, contending that this practice would lend itself to discrimination and even to "negative blacklisting". It maintained that the other two provisions would raise the possibility of coercion and price fixing.

IV. THE EFFECT OF THESE CONTROVERSIES

The outcome of the various controversies can be most readily comprehended from a discussion of the pertinent provisions of the Code, and a comparison with the similar provisions in the original proposal.(****)

The provision relating to publicity of prices, terms and conditions of sale (Article VII) (*****), required that each member, within ten (10) days after the effective date of the Code, publish his prices, terms and conditions of sale on all products and furnish each class of trade with the prices, terms and conditions of sale affecting that class. Coincidentally

---

(*) Supra, p. 500.

(**) Report of Assistant Deputy Lawson dated September 5, 1933. (In NRA Files, Volume A. p.65)

(***) Memorandum dated September 29, 1933, from L.F.Boffey of the Consumer's Advisory Board to Malcolm Muir, Deputy Administrator. (In NRA Files, Volume B, p. 99)

(****) Supra, p. 523.

(*****) See Article VII of the Code for the Asphalt Shingle and Roofing Industry, Codes of Fair Competition, Volume II, p. 533.

with such publication each member was required to file with the Code Authority, and the Code Authority was required to immediately distribute to all members of the Industry, a complete schedule of such prices, terms and conditions of sale.

Section 2 of that Article provided that in the event that changes were made in any of the above published facts the member so changing should file with the Code Authority a full and complete copy of all such changes, within periods to be determined by the Code Authority, but not exceeding five (5) days in advance of the change. The agency with which this information was filed was required to send copies of such changes to all the members of the industry immediately, and on the effective date to publish them to the trade concerned.

It was further provided in this Article that no member should sell, pay a rebate, or allow a deduction except in conformance with prices filed, but any member was permitted to change his prices, terms, etc., individually and of his own volition.

Article VIII (*) related to publicity of qualifications of the different classes of customers, as established by the individual member, and the filing of the names of all the customers falling in each class. These qualifications could be changed as the will of the member dictated, but all changes were required to be published to the trade and filed with the Code Authority. The names and location of the members of each class were to be open to inspection by the members of the industry and of the trade but the name of the manufacturers submitting such names were not to be disclosed without their consent.

Thus members of the industry were required to file prices, terms, conditions of sale, definition of their various customer classes (if any) and the names and location of all customers so classified with the Code Authority. All of this filed data was subject to change at the discretion of the manufacturer filing, but when prices, terms or conditions of sale were changed other members of the industry were to be notified five days in advance of the effective date of such change.

(*) Ibid.

CHAPTER V

RELATION OF PRICE FILING TO OTHER CODE PROVISIONS

In addition to the requirements for filing prices, terms and conditions of sale and trade qualifications, which were all an essential part of the price filing plan, there were other trade practices which tended to strengthen the prohibitions set out in those provisions.

In order to prevent or forestall any attempt to evade the provisions relating to prices, Article IX, Section 5,(*) declared the granting of any rebates, refunds, commissions, credits, or unearned discounts, in the form of money, services or privileges, to be an unfair trade practice and to be in violation of the Code. Section 6 of the same Article (**) forbade the giving of prizes, premiums or gifts in connection with the sale of products or as an inducement thereto, by any scheme involving lottery, misrepresentation or fraud.

Through these two sections an effort was made to prevent evasions of the price filing plan by devious methods, which might not of themselves constitute violations. Not only was a violation of the filed prices forbidden, but also the granting of any gratuities which might have the same result, as a deviation.

The other Code provisions relating to prices or to price filing were not in the nature of additional forces compelling adherence to filed prices, but were provisions having a tendency to limit the freedom which might be exercised in determining the price to be filed.

I. PROHIBITION OF SALES BELOW COST

The original proposals from the industry provided that no member should sell to the trade any product at a net price which was below the said member's total cost thereof. Total cost was defined to include "all items properly chargeable to the operation of such member's business"(***) and included such items as the cost of raw materials, manufacturing, selling transportation, depreciation and interest, all items of overhead expense and "all other items in conformity with sound accounting practices."

(*) See Article IX, Section 5 of the Code for the Asphalt Shingle and Roofing Industry, Codes of Fair Competition, Vol. II, p. 534.
(**) Ibid.
(***) Transcript of Public Hearing, September 21, 1933, p.30, (in NRA Files.)

Protests were registered against this provision by the Mail Order Association of America and by the Consumers' Advisory Board. The Association contended that the determination of "total cost" was extremely difficult, that enforcement would be a problem and that the real purpose of the provision was to fix prices.(*) The Consumers' Board suggested the substitution of a provision establishing a cost accounting system, subject to the approval of the Administrator, and that the decisions of the Code Authority on points of alleged violations be subject to review by the same authority.(**)

It appears that something in the nature of a compromise must have been effected for the Code, as adopted, contained an amended provision on Selling Below Cost and further provided in Article VI, Section 2 (e) (***) that the Code Authority should make a study and should make recommendations based on that study with regard to a uniform cost accounting system. The Code prohibited the sale of any products by members of the industry at a net price which was below the said members' "direct costs". "Direct Costs" were defined as consisting of raw material costs (inclusive of transportation and shrinkage); direct labor costs; manufacturing burden (inclusive of power and steam, factory overhead, maintenance expense, technical control, factory warehouse, and factory shipping charges); plus a markup of 15% of the total of these three items. It was provided that any member might sell below his own "direct costs" to meet competitive prices which he had not investigated and to meet competition in violation of this rule, pending action theron.(****)

II. MISCELLANEOUS SEMI-RELATED PROVISIONS

Though not directly affecting the price filing provisions of the Code, but materially affecting the pricing practices of the industry, Article X, Section 3 of the Code stipulated that nothing contained in the Code should be construed as prohibiting any member of the industry from exercising "all its and/or their existing lawful patent rights, or as requiring any member of the industry to do any act in conflict with the terms of any existing valid patent licensing agreement.(*****)

(*)Ibid, p.93.
(**) Memorandum dated September 29, 1933 from L.F. Boffey of the Consumers' Advisory Board to Deputy Administrator Malcolm Muir, (in NRA Files, Volume B, p. 99)
(***) See Article VI, Section 2(e) of the Code for the Asphalt Shingle and Roofing Industry, Codes of Fair Competition, Vol. II, p.532.
(****) Ibid. Article XII, p, 535-536
(*****) Ibid, Article X, Section 3, p. 535

This interpretation permitted the Patent and Licensing Corporation to continue to set up customer definitions and to fix minimum prices as related to patented products and as related to non-patented products when shipped such patented products.

The Code further provided that the Code Authority should study, with a view to making recommendations to the Administrator, the problems of limitation of production, limitation of new equipment, industry merchandising plans and a system of exchange of credit information. The provisions in themselves had no effect on prices or price filing but the possible results might have had. In reality the Code Authority reported only on the question of a uniform merchandising plan, and while they pushed this measure with considerable interest, they were never successful in obtaining its adoption.

CHAPTER VI

ADMINISTRATION OF PRICE FILING PLAN

I. THE ADMINISTRATIVE AGENCY

Originally it was intended that the Code should be administered by the Institute, but by the time of the public hearing the proposal had been changed to virtually the form in which it was approved. As finally ratified, it was provided that the Code should be administered by a Code Authority consisting of five (5) individuals elected from among those subject to the Codes and agreeing to comply therewith by a two-thirds vote of all such industry members, three to be elected from the membership of the Institute and two from those not members of the Institute at the time the Code was adopted.

The first Code Authority was elected at a meeting in New York City, October 25, 1933, (*) but at the request of Assistant Deputy Lawson another election was held. The request, no doubt, was made by Mr. Lawson in view of the fact that this selection preceded the approval of the Code by fifteen days and its effective date by twenty-nine days. The Assistant Deputy felt that to be properly elected under the Code, the election should not antedate the effective date of the document which granted the power.

A. The Code Authority

The first duly elected Code Authority consisted of the following individuals from the membership of the Institute:

Mr. Herbert Abrahams, Chairman,
President, Ruberoid Company for over twelve years and connected with the company in various capacities for over thrity years;

Mr. L. R. Hoff,
Vice President of Johns-Manville Company for ten years and connected with the company for over thirty years;

Mr. C. W. Bayliss,
Vice President of Barber Asphalt Company for over twelve years and connected with the company for over twenty years;

and the following from the non-members of the Institute:

Ralph P. Muller,
Vice President of Cooper Company for three years and connected in various capacities with Ruberoid Company, with National Asbestos Manufacturing and Cooper Company for approximately 19 years;

(*) Code History of the Asphalt Shingle and Roofing Manufacturing Industry, as amended August, 1935, p. 14, (in NRA files)

John A. Scharwath,
President of National Asbestos Manufacturing Company for approximately twenty years and connected with the Industry for over 40 years.

It may be said that the latter two members of the Code Authority, in addition to representing the non-members of the Institute, also represented the smaller members of the industry. The Chairman of the Code Authority was President of the Institute and was a member of the Executive Committee as were the other Institute representatives.

To assist the Code Authority in carrying out its duties, Mr. J. S. Bryant, who had been connected with the Institute since 1926 in the capacity of Manager, was appointed Secretary; and Mr. P. C. Rowe, an affiliate of the Flintkote Company, Assistant Secretary. At its meeting on November 20, 1933, the Code Authority appointed Lewis H. Brown, President of Johns-Manville Company as Treasurer. (*) Mr. Brown at that time occupied a like position with the Institute.

Other industry representatives of the Code Authority were: (**)

Mr. Smith Simpson, former Aide to Assistant Deputy Administrator Lawson, appointed confidential agent, May 7, 1934;

Mr. O. A. Bigler, Assistant Secretary, November 20, 1934, with Philips Carey in an executive capacity for many years, appointed to take the place of P. C. Rowe, resigned:

Mr. R. T. Kidde, Agent in Charge of Chicago Office, December 3, 1934, appointed to replace P. C. Rowe, resigned:

Mr. I. J. Harvey, Treasurer, January 10, 1935, President of the Flintkote Company, appointed to replace Lewis H. Brown, resigned.

B. Powers and Duties of the Code Authority

The Code Authority, by the instrument creating it, was empowered to adopt its own rules of procedure and to delegate its authority, or parts thereof, to such agencies and committees as it might select. This in general gave the Code Authority the right to avail itself of the offices and services of the Institute.

Specifically, subject to the right of the Administrator to modify or disapprove, the powers and duties of the Code Authority were as follows:

(a) To require each member of the industry to file reports with respect to specified matters and such other matters as might be deemed pertinent.

(b) To permit all members to participate in and share the benefits of the activities of the Code Authority.

(*) Ibid, p. 17

(**) Ibid, pp. 18B-19

(c) To collect all confidential information through an agency which should keep such information in confidence except when required by the Code Authority for the proper administration of the Code.

(d) To designate an agent or agents, not members of the industry, to investigate complaints of violation. All pertinent information so collected should be kept in confidence except in instances when the alleged violation was substantiated, in which event the information should be turned over to the Code Authority for proper disposal.

(e) To study and to recommend to the Administrator any regulations regarding the following:

Uniform Cost Accounting;
Limitation of Production;
Limitation of New Equipment;
Industry Merchandising Plan;
Simplification and Standardization;
System of Exchange of Credit Information;
Inequalities Affecting the Stability of the Industry.

These recommendations, if approved, after such notice and hearing as the Administrator deemed necessary, were to become operative with the same force and effect as any other part of the Code.

These powers as measured by similar provisions in other Codes were neither unusual nor unreasonable. The Code Authority was designated as the agency to administer the Code and the procedure to be followed, while not specifically limiting the activities of the administering body, indicated the general lines of those activities. How successfully the Code pointed the way can best be determined by a study of the action taken.

C. Rules and Regulations Promulgated by the Code Authority

Rules and regulations established by the Code Authority are too numerous to be mentioned individually. Of the twenty-two (22) Code meetings, few, if any, were adjourned without having passed a number of rules to regulate the conduct and procedure of the members of the industry. It is of interest to note that fully 95 per cent of these rules had to do with the filing of prices or customer classification. A considerable number of these regulations were issued as explanations or interpretations and will be discussed later. (*)

An attempt wil be made, by citing a number of examples, to indicate their scope and the great latitude covered by them.

(*) Infra, p. [illegible]

Minutes of meeting, 3/27/35
Code Authority, with concurrence of the Administration Members ruled that the Industry Members must file with the Code Authority fifteen days before the effective date a list giving names and locations of trade buyers who would receive the prices and terms applying to the various classifications of trade.

Minutes of meeting, 9/3/34
Code Authority rules that five days advance notice must be filed with the Code Authority when equalization with unpublished freight rates should result in a decrease in the net cost of a shipment to a customer.

Minutes of meeting, 5/1/34
It was ruled that new items added to a member's line of products must be filed within five days; members shipping via carriers having unpublished freight rates or equalizing against such rates must give publicity to the rates applying; and, product life guarantees must be filed as part of a member's prices, terms and conditions of sale.

Minutes of meeting, 7/18/34
Code Authority ruled that in classifying customers, members must include in their filing each location in which a customer had a place of business.

Minutes of meeting, 4/9/34
Code Authority ruled that members need not publish prices beyond the third decimal point. (*)

Minutes of meeting, 11/29/33
Ruled that all complaints of actions of an agent or agency of the Code Authority made pursuant to Section 2 (f) of Article VI should be made in writing and addressed to the New York office of the Code Authority.

Minutes of meeting. 11/29/33
Ruled that to prevent secret allowances, the members of the Industry should give publicity to prices of all items not included in the list of products of Article II, Section 6, in order that there would be some check in instances of mixed shipments.

A recital of the Code Authority rulings could be continued indefinitely. As previously noted, by far the greater portion of these rulings referred to some phase of price filing.

(*) The Patent and Licensing Corporation at about the same time issued the same ruling to govern prices of patent products.

D. Explanations and Interpretations

Between the effective date of the Code, November 20, 1933 and the Schechter Decision, May 27, 1935, the Code Authority issued a total of thirty-three Bulletins and Explanations, twenty of which were concerned with some phase of price filing (publicity of prices, terms and conditions of sale or customer classification).

Apparently some doubt existed in the minds of the members of the Code Authority as to their power to issue instructions, for at a meeting of that body on November 29, 1933, it voted to forward to the Administrator copies of all such documents thus far issued and all that might be transmitted to the industry in the future. The vote on this question was not unanimous, L. R. Hoff dissenting. (*)

The Code Authority released a number of Bulletins on November 29, 1933, which were ordered recalled by Assistant Deputy Administrator Lawson.(**) It does not appear that these Bulletins were out of order nor does the demanded recall indicate the assumption of powers not delegated. Mr. Lawson at this time established the policy of reviewing all instructions issued by the Code Authority. The Bulletins thus held in abeyance were reissued under date of March 10, 1934, at which time all such documents emanating from the Code Authority office, with the exception of Number 17, were circulated to the industry.

In many instances it is difficult to distinguish between an interpretationswith the exception of those issued by the Administration) an explanation and what was designated by the Code Authority as a Bulletin. Either of the latter two, which were commonly published to the members of the industry by the Code Authority, were used to explain and interpret the meaning of the various provisions of the Code. These documents are too voluminous to be quoted here in toto and in lieu of such quotation an attempt will be made to summarize the rulings so issued under the proper caption.

1. Bulletins

The first reference to price filing was in Bulletin Number 2, which was issued for the purpose of instructing members in the method of filing and time of filing when prices were changed. The introductory paragraph stated: (***)

> This bulletin is for the purpose of providing every member of the industry with a common understanding of what is required in connection with Publicity of Prices, Terms and Conditions of Sale on all Sales made for Delivery within the Northern and Southern Sections.

(*) Minutes of Code Authority meeting, 11/29/33, p. 2, (in NRA files)

(**) Letter dated December 3, 1933 from Assistant Deputy Administrator W. M. Lawson to Code Authority for Asphalt Shingle and Roofing Industry. (In NRA files, Code Authority Letters Folder)

(***) Bulletin No. 2, 3/8/34, in NRA Files, Bulletin Folder

The bulletin quoted the first sentence of Article VII, Section 1, and stated that this publicity applied to all products both patented and unpatented. The publicity requirements could be met by publishing this data in part on price lists and in part in a merchandising plan, provided that in this manner complete information was furnished to each class of trade. In order to furnish complete information each member was required to publish in this combined manner, provided they were a part of his terms and conditions of sale, the following: trade qualifications and definitions or types of shipments; terms and conditions on which order would be accepted; trade discounts, commissions and quantity discounts, with the basis on which same were extended; amount and term of each discount; and, freight equalization and freight allowance points or zones with outlines of methods and conditions of freight equalization.

The Code provided for the filing of price changes as designated by the Code Authority, with the reservation that the date of filing should not be in excess of five days before the effective date. In keeping with the authority to fix the time of filing changes, the industry was informed that when the effect of the change was to increase prices no notice prior to the effective date was required, but that the member so changing should publish to the trade and file with the Code Authority on the effective date. In the event that the change in prices, terms and conditions of sale resulted either in no increase in net price or in a decrease in net price such changes were to be filed with the Code Authority five days in advance of the effective date. Should the change be made by any member other than the one initiating the price decline and should the effect of such change in no instance and to no class of customers be more favorable than the price quoted by the one initiating the decline, these prices would be effective on the same date as would be the prices of the initiator; but should these prices in any instance be more favorable to any class of customers in any locality they would not be effective until a lapse of five days from the date on which they were filed.

The Bulletin stated further that if it were the policy of any industry member to sell to any consumer, such as general consumer, intrastate industrial consumer, etc., it would be necessary to include in prices, terms and conditions of sale published to the trade, the prices, terms and conditions of sale in effect to all such types of customer. This necessary data could be included in either the price list or the merchandising plan. In connection with this publicity it was pointed out that while the Code required that such publicity be made to the trade concerned, it did not require that this publication be made to the actual consumers involved.

Many of the requirements set forth in this letter of instruction seem to be inconsistent with the spirit in which the publicity provision was written and the purpose avowed at the time the code provision was sought. If benefits were to be derived from enlightening members of the industry and the trade concerned as to the prices asked and received for the products by the various members, why should there be a distinction between changes which resulted in a price increase to the trade and changes as a result of which the net price remained constant or decreased? In regard to publication to the trade concerned how could the purpose be served when such prices were kept from the "actual consumer " and that

consumer was a member of the trade concerned, being so classified by the members of the industry?

Bulletin No. 11, officially released on the same date as the above Bulletin, sought to supplement these instructions with rules governing filing with regard to protection orders, special products made to meet specifications, combined sales of industry and non-industry products and sales to employees. When a member sold either a protection order or special products made to meet specifications, he was requested to file information with the Code Authority which would describe the particular job and the products to be used. If industry products were sold in conjunction with non-industry products the member was required to file with the Code Authority the prices of the non-industry commodities included in the order. Finally, sales to employees were subject to the same publicity requirements as other sales. The purpose of these rules was, no doubt, to keep members of the industry from using such orders as ruses under which they might at times violate their filed prices.

Bulletin Number 3 explained the requirements under Article VIII, Publicity of Trade Qualifications, in much the same manner that Number 2 had explained Article VII. It was ruled that it was necessary for each member to publish his trade definitions and the terms and conditions of sale applicable to each class of trade so defined. These definitions and applicable terms and conditions were to be published to the entire trade rather than only to the class of trade concerned. In the event any change was made in a member's trade qualifications, these changes were to be given the same publicity as the original definitions. It was noted that this Article required each member to file, with the Code Authority, the names of his trade under the classification to which such member of the trade had been assigned. The names so filed were to be compiled into an alphabetical list by states and would be available to the members of the industry without revealing the manufacturer who had filed the names in the respective classes.

Bulletin Number 12 ruled that it would constitute an unfair method of competition, in respect to the products enumerated in Section 1-A of the proposed Industry Merchandising Plan, for any member in the Northern or Southern Sections to enter into any contract, either verbal or written, the terms of which were effective beyond thirty days from the date of execution. It was further held that this rule should remain in effect until revoked by the Code Authority or the Administration, or until the proposed Merchandising Plan was approved. This ruling seemingly made activities of the members dependent upon the Merchandising Plan which had not yet been submitted for approval and which was never approved by the Administration.

Number 13 held that guarantees against price declines were terms or conditions of sale and must be filed with the Code Authority five days in advance of their effective date.

Bulletins Number 8 and 15 explained Section 5 of Article IX and ruled that purchases from customers or prospective customers at prices above the market price constituted a rebate or allowance and was prohibited

by Code.

Bulletin Number 10 sought to prevent evasions through sales to 'exporters' and required that all sales for export purposes be accompanied by a statement by the buyer that the goods purchased would not be offered for sale in the United States. Further the buyer was required to agree that in the event he violated the provision he would pay as liquidated damages the sum of five hundred dollars (500) per carload or portion thereof which was sold in violation of the agreement.

Bulletin Number 16 required full publicity with regard to patent agreements and patented products when the patent was held by non-members of the industry. Such publicity was to include prices, terms and conditions of sale; a statement of whether the license agreement involved "price control"; a full description of product; and the amount of royalty paid to the non-member of the Industry. According to Mr. Bryant, members did not comply with this ruling nor did the Code Authority insist upon such compliance. (*) The Code Authority believed that details of royalties, price control, etc., should be published when held by members of the industry, but that the filing of such information when the patent was held by a non-member of the industry would serve no useful purpose. Why the attitude of the Code Authority changed in regard to these patent agreements is not known. At the time the Bulletin was issued it was common knowledge that practically all of the patents governing the products of the industry were controlled by the Patent and Licensing Corporation, a non-member of the industry, and in the light of that knowledge the explanation that the required publicity would be of value only when the patents were owned by members of the industry, appears to be rather weak.

Bulletin Number 9 explained to the members of the industry the meaning of "net price" as used in Article XII. It was ruled that the term meant the price after deducting all discounts and allowances extended by the member, including transportation allowances.

2. Explanations

Of the fifteen Explanations issued by the Code Authority between June 4, 1934 and May 7, 1935 (it seems that before June 1934, instructions sent out by the Code Authority were in the form of Bulletins and that from that date such instructions were issued as Explanations) thirteen pertained to the problem of price filing. By and large, their purpose was to explain the meaning of filing of "prices, terms and conditions of sale" and tended to broaden the meaning of that expression. Thus size and weight became a term or condition of sale as did conditions of time payments, guarantees, cooperative advertising, unpublished freight rates, inspection service and gratis training of salesmen. It would seem that whether the latter two constituted discounts or premiums would depend upon the value of the inspection or the training, but in either

(*) Letter dated May 15, 1934 from J. S. Bryant, Secretary to the Code Authority for the Asphalt Shingle and Roofing Industry to Assistant Deputy William Lawson. In NRA Files, Trade Practice Folder.

event, they were deemed a part of the price and as such would have been published.

A brief summary of each Explanation, giving the number and the date it was issued, follows: (*)

No. 1, issued June 4, 1934, required the publication of dimensions, weight and type of saturant, on slate roll roofing offered for sale in jumbo rolls.

No. 2, issued June 4, 1934, required the publication of weight, number of square feet and dimensions in price publication.

No. 3, issued June 4, 1934, required the publication of offers to train salesmen for trade buyers as a condition of sale.

No. 4, issued June 4, 1934, held that terms and conditions of time payments should be published as a condition of sale.

No. 5, issued June 4, 1934, held that when completing materials were included in the order and not billed separately, a description of such materials should be published.

No. 7, issued June 4, 1934, required price publication for new or altered items, offered for sale.

No. 8, issued June 4, 1934, ruled guarantees issued in connection with industry products a condition of sale, requiring publication.

No. 9, issued June 4, 1934, ruled cooperative advertising offered to trade buyers a condition of sale which required publication.

No. 11, issued July 18, 1934, required publicity of unpublished freight rates.

No. 12, issued August 22, 1934, required publicity of number of decimal points used in deducting discounts or computing delivery charges. (Release by NRA said not to constitute approval of freight equalization, insofar as explanation related to delivery charges.)

No. 13, issued December 26, 1934, requested each member of the industry to publish in his merchandising plan or price list the date on which invoices were issued. If that date was not the date of the shipment, each member was required to give the maximum time elapsing between the shipment date and the date of the invoice.

(*) See Explanations, in NRA Files, Explanations Folders

No. 14, issued February 5, 1935, ruled that should a member of the industry establish prices, terms or conditions of sale affecting any particular trade buyer or class of trade buyers not previously defined, such information should be filed. This might be done in his merchandising plan or supplement thereto. Should a new merchandising plan be issued it would be considered that this new plan canceled all previously issued supplements.

No. 15, issued May 7, 1935, ruled inspection service, furnished in connection with sale of industry products for built-up roofs, to be a condition of sale and as such should be published.

E. Unauthorized Activities

The opinion as to what constitutes an unauthorized activity varies a great deal with the individual interpretation of the code provisions from which the source of power rises. According to the interpretation of the Code Authority, that body was at all times well within bounds of the power granted it under the Code. At the same time some less generous or less biased individual might have questioned many of their rules and regulations. In at least three instances all but the Code Authority seem to be in accord. It was rather generally believed that in its activities in relation to customer classification, elimination of set-up warehouses and general industry advertising program, the Code Authority was either exceeding its power or was engaged in activities which were foreign to the power delegated to it.

1. Misclassification Meetings

The Code, inArticle VIII, granted to each member of the industry the right to classify customers inany manner that it saw fit, but required that the classifications so established must be published to the trade and filed with the Code Authority. Also reserved to the individual members was the right to change their class definitions of their own volition, provided these changes were published in the same manner as the original publication and filed with the Code Authority. Article VI, Section 2 (e) extended to the Code Authority the power to study the advisability of a uniform merchandising plan and to make recommendations to the Administrator concerning this problem. Upon the receipt of these recommendations the Administrator was to hold such public hearings as he deemed advisable and should these recommendations be approved they would operate with full force and effect. The proposed Uniform Merchandising Plan came up for hearing March 20, 1934 (*) but met with opposition on all sides and was never approved.

The purpose of this Plan was to establish uniform customer classes and to fix uniform terms and conditions of sale. On May 25, 1934, the Code Authority announced to the members of the industry that in June there would be held a series of Regional meetings to discuss the problems of misclassification of customers. On June 4, 1934, the Assistant Deputy Administrator

(*) Infra, p.

wrote the Code Authority (*) requesting that prior to these Regional meetings the Code Authority call to the attention of industry members the fact that they might classify customers in any manner they wished; in addition, this information was to be made known to them in the form of an announcement at the beginning of each meeting.

If the above letter was intended to dissuade the Code Authority from holding these meetings it failed in its purpose, for not only were the meetings held in June but others followed. In August notices were sent to members that another series of meetings would be held in September and it was requested that those filing complaints of misclassification should bring to the meeting evidence of the alleged violation and that such allegations be specific and refer to one instance only. For some reason these meetings were delayed and a letter of October 1, 1934 (**) notified the members that the subject of Misclassification had been up for discussion at the 'General Industry Meeting' on September 13 and that regional conferences would be held in November. The schedule when announced allowed for sufficient lapse of time for an agent of the Code Authority to attend all meetings. (***) The effect of and the reaction to these meetings can best be summarized by quoting from the memorandum from Peter Stone of the Research and Planning Division. (****) In the memorandum Mr. Stone pointed to the increases in prices since May 14 and explained them in the light of the 'Misclassification Meetings':

> "For some time past we have been receiving complaints as to the increased prices of asphalt shingles and asphalt roofing. Particularly retail lumber dealers have called our attention to the fact that since May 14 three price increases have gone into effect up to July 12. Since the volume of construction and hence the volume of asphalt shingles has decreased, it does not appear that such an advance is justified on the basis of volume moved nor on the basis of demand, and further, since an increased price will have a tendency to slow down recovery, we have attempted to examine the sources of unwarranted price increases to see whether any section of the code might be responsible therefor.
>
> Data has been obtained on certain asphalt roofing products, showing the prices from October 4, 1933 to July 12, 1934. The following table shows comparable prices:

(*) Letter dated June 4, 1934, from Assistant Deputy Administrator William Lawson to the Code Authority for the Asphalt Shingle and Roofing Industry. (In NRA files, Code Authority Letters Folder).

(**) Letter dated October 1, 1934 from the Code Authority for the Asphalt Shingle and Roofing Industry to Members of the Industry, (in NRA files, Trade Practice Folder)

(***) Ibid

(****) Memorandum dated Sept.6,1934 from Peter A.Stone, Division of Research and Planning to Beverly Ober, Deputy Administrator. (In NRA Files, Protests Folder)

	Price 11/30/33	Price 5/14/34	Price 6/5/34	Price 7/12/34
10" Strip Shingle	$4.20	$4.20	$4.38	$4.78
553 Rolled Roofing	1.45	1.45	1.50	1.70

It may be noted that since May strip shingles have advanced 14% while rolled roofing has advanced 18½%. Construction contracts awarded have declined in a similar period from $134,000,000 in May to $119,000,000 in July.

An examination was made of the various bulletins, interpretations and circular letters issued by the Industry's Code Authority to Members of the Asphalt Shingle and Roofing Industry and such examination had revealed the following information:

(1) Of the various bulletins, interpretations and circular letters issued by the Code Authority to members of the industry, the only one that would tend to preserve or control prices is the one of May 25, 1934, which was directed to members of the industry relative to classification of customers. This letter directed the calling of meetings in various parts of the country with respect to qualifications for the trade. Such meetings appear to be a device for bringing about the uniformity of classification of customers and classification of discounts; this in spite of the fact that Article VIII of the code permits an individual to state his own classification for each kind of buyer. The fact that these meetings were held during the period of the price increases mentioned above, indicated that there may be some connection between these original meetings on classification of customers and price increases."

2. "Set-Up" Warehouses

On September 21, 1934, the Code Authority sent out a circular letter listing the warehouses of the industry as revised September 20, 1934. Th Asphalt Shingle and Roofing Industry at its meeting in White Sulphur Springs, West Virginia, October 25 and 26, 1934, passed a motion that the Code Authority study the problem of 'set-up' warehouses with the view of issuing a ruling to eliminate them. It would appear that this type of warehouse is in a sense a fictitious appendage of the manufacturer whereby storage space is rented from a favored customer, an arrangement which might be used as a means of evading the published prices. Although the exact relation between the meeting and the list is not apparent, the two were joined in the letter of December 7, 1934, from Assistant Deputy Plimpton to the

Code Authority (*) indicating some casual relation.

The letter from Mr. Plimpton was written at the suggestion of Mr. T. R. Vaughn of the Legal Division and it requested the Code Authority to cite the derivation of their power to carry on this activity. Mr. Plimpton's letter follows: (**)

> Our attention has been called to the circular letter sent out by your Code Authority on September 21 and containing a list of warehouses revised as of September 20, 1934. Apparently the sending out of this list is outside the scope of the Code. You can appreciate, of course, that we are not in any position to approve or even comment on action by the Code Authority unless said action is specifically authorized by the Code. We would like to get your opinion, therefore, as to just why the Code Authority should attempt to pass on the elimination of certain types of warehouses assuming that there is an enabling provision.

Mr. J. S. Bryant, Secretary to the Code Authority responded to the above query on December 13. He stated that the authority for this activity was derived from Article VII, Section 2, which Article and Section governed the filing of changes in price, terms or conditions of sale. Mr. Bryant pointed out that any such warehouses established in the neighborhood of a favored customer would result in a more advantageous price and he quoted from merchandising plans of members of the industry to substantiate this assertion. No direct attempt was made to justify the elimination of these warehouses.

Apparently this explanation was not satisfactory to Mr. Plimpton for on December 15 he called the matter to the attention of the various Advisory Boards and asked for a conference on December 19.(***).

There seems to have been a difference of opinion as to the 'legality' of these activities. F. J. Parchell, Administration Member of the Code Authority, wrote the Assistant Deputy on December 20 stating that it seemed to him the circular letter was entirely in order but that if the Code Authority attempted to prohibit the use of 'set-up' warehouses it would be a matter for submission to the Administration. The Consumers' Advisory Board, in a memorandum of January 22, 1935, suggested that the Code Authority be informed that any attempt to eliminate any type of service was patently beyond their power and that a list of warehouses and application of other price terms of members of the industry should be broadcast to the trade in the same manner as the individual lists.

(*) Letter dated December 7, 1934 from Assistant Deputy Administrator Plimpton to the Code Authority for the Asphalt Shingle and Roofing Industry, in NRA files, Merchandising Plan Folder.

(**) Ibid

(***) Memorandum dated December 15, 1934, from Assistant Deputy Administrator R. E. Plimpton to the Advisory Boards, (in NRA files, Trade Practice Folder).

The final solution of this problem is not known though it would appear that the Code Authority desisted from further attempts to eliminate these warehouses as no further comment is found in the files.

3. Industry Advertising Program

In September 1934, Mr. Plimpton asked the opinion of the Legal Adviser as to the legality of a Code Authority activity which had recently come to his attention. The Code Authority was undertaking to sponsor a national advertising campaign of the products of the industry. The program was to be a cooperative on which would tend to promote the sale of the industry product in general rather than those of any individual company. An opinion was requested of the Legal Division regarding the scheme as a subject of review or control by NRA; the proper exercise of power granted the Code Authority in the Code; what provision authorized such a plan and, regardless of the authorization, what consideration of policy or public interest would justify any particular form of supervision by NRA. (*) To these interrogations, Mr. Price of the Legal Division replied that when completed and in operation it was not a matter for review by the NRA unless the Code Authority continued to sponsor it, that it was not a proper exercise of power granted in the Code, as the Code conferred no such power, and that the NRA had no right to supervise unless it was submitted by the Code Authority under Article VI, Section 2.(e). Mr. Price stated further that if submitted, the plan would not have the approval of the Legal, Consumers' or Research and Planning Divisions and that the plan should be discouraged. (**) In his memorandum Mr. Price went on record as being of the opinion that only the Federal Trade Commission could prevent such activities on the part of the industry.

F. Amendments

During the life of the Code, the Code Authority proposed some twelve to fifteen amendments, the final disposition of which fell into four classes; those approved, those not approved, those withdrawn, and those pending at the time of the Schechter Decision. Some of these proposals had no bearing on the price filing activities or the economic effects thereof and for the purpose of this discussion will be ignored. An attempt will be made to treat the others briefly, giving due consideration to the significance of each proposal, whether approved or not.

1. Uniform Merchandising Plan

By authority granted in Article VI, Section 2 (e) the Code Authority was empowered to study the problem of merchandising plans and make recommendations pertaining thereto. The Code became effective November 20, 1933, and before a month had passed (December 19, 1933) (***) a

---

(*) Memorandum dated Sept.26, 1934 from R.E.Plimpton, Asst.Deputy Administrator to Chester Price of the Legal Division. (In NRA files, Trade Practice Folder)

(**) Memorandum dated Oct.12,1934 from Chester Price of the Legal Div. to R.E.Plimpton, Asst.Deputy Administrator. (In NRA files, Trade Practice (Folder)

(***) Memorandum dated Jan. 19, 1934 from Asst. Deputy Administrator William Lawson to the Administrator. (In NRA files, Central

preliminary draft of a plan was submitted to the industry. Copies of this plan were subjected to criticism of the NRA advisors, the Department of Justice and the Federal Trade Commission.

In its essence, the plan was the same as that under which the industry was operating at the time the Bill in Equity was filed against it.(*) It included the same complicated system of customer classification, with practically identical definitions of customer classes and the same intricate scheme for related discounts. Its complexity all but prohibits an explanation and discussion here; however, the comments of the Department of Justice and the Federal Trade Commission will indicate its scope and meaning.

The Department of Justice commented that in deciding to approve or disapprove the Plan, the Administration must determine whether it wished to authorize "this combination to fix prices and to black list or white list its trade". (**) In its consideration the Department enumerated three points which tended to make for price fixing. It was noted that competition in this industry had in the past been on discounts rather than on basic price lists; that the history of previous restricting maximum discounts had shown that the maximum figure had become the fixed figure; and that the third major factor of legitimate price, charges for transportation, were fixed in minute detail. In conclusion, Mr. Stephens stated:

> "We have previously drawn attention to the possibilities involved in placing business in patented products under a system of restraints along with the non-patented, and to the fact that one of the largest companies of the group, the owner of most of the patents previously charged with various forms of unfair prices, particularly chiseling the business of its licensees, is represented on the Code Authority to which these licensees report the names of their customers and every detailed information.
>
> On the whole this Department is forced to the conclusion that the system of prices outlined by the proposed plan cannot be carried out except through the exercise of monopolistic control by the combination."

The Department took occasion to make further comments in a letter of January 4, 1934. At this time the attention of the Administration was called to the striking similarity between the proposed plan and the practices covered by the Government's complaint. Mr. Stephens wrote as follows: (***)

(*) Supra, p. 541.

(**) Letter dated December 23,1933 from Harold A.Stephens, Assistant Attorney General to NRA. (Copy in Department of Justice Files, Folder 7).

(***) Letter dated January 4, 1934 from Harold M. Stephens, Assistant Attorney General to Assistant Deputy Administrator Lawson. (In NRA Files, Trade Practice Folder).

"The practices covered by the government's complaint are virtually the same as those covered by the rules submitted to the Administration. The action was begun three years ago and is still pending, some doubt has arisen as to the appropriate method of procedure in the light of present circumstances. It is quite apparent that the government should not proceed to a determination of the matter if the proposed practices are now put into effect. However, it is felt that your own Administration should be entirely free to take such action in connection with the Code and the proposed changes as it may deem appropriate."

The attack of the Federal Trade Commission centered on the practice of freight equalization which was criticized most severely. It was alleged that this practice would tend to freeze channels of distribution, stifle competition, maintain artificial price levels and unreasonably increase prices. The Commission intimated that the plan could be successful (from the point of view of the industry) only when other elements of price fixing were present.

When the proposal came up for public hearing, March 20, 1934, protests were made by members of the industry, the Retail Lumber Dealers, reserve supply companies, the Mail Order Association of America and wholesale hardware dealers. (*) In every instance the protests considered only the effect of approval of the plan on the particular group represented by the protestants; consequently it was charged that if approved the plan would be discriminatory.

The Advisory Boards, with the exception of the Industrial Adviser, recommended that the plan be not approved. The criticisms from this group were more general but they concentrated on the opinion that the plan would result in price fixing and that in Section VII, paragraph D, an attempt was being made to establish resale price maintenance. The latter feature was an innovation since the Industry Plan of 1929.

After the hearing, numerous conferences were held between industry representatives and the Administration though nothing tangible resulted from these discussions. No definite action was taken and the plan was never approved or disapproved. Despite the adverse criticism voiced on all sides, the Code Authority contended to the end that no disposition was made of the matter and that it was still pending.

2. Liquidated Damages Agreement

The only amendment successfully proposed by the Code Authority provided that members of the industry might enter into an agreement between themselves providing for liquidated damages in cases of Code violations.

The proposal as submitted deviated from the Model Code Provision (O.M.II - 1626.1) in two instances. A surety bond ranging from $5,000 to $50,000 was provided for, and the Code Authority was empowered

(*) Transcript of Public Hearing, March 20, 1934

to make equitable reductions in the amount of damages. Also the agreement fixed penalties with regard to violations of the labor provisions of the Code and an amount equal to 25 per cent of the actual selling price of the products involved in all other violations.

The Notice to be Heard (A.C. 99-15) issued January 16,1935, elicited complaints from two members of the industry who expressed the opinion that small manufacturers might be injured and that the amendment was unnecessary and might be illegal. (*) The Advisory Boards were equivocal in their reports expressing satisfaction with parts of amendment, while making objections to other parts; also, they expressed dissatisfaction with the failure to include some provisions for supervision by NRA. The Consumers' Board requested that the proposal be submitted to the Advisory Council for an opinion. This request was granted and the Council recommended that the amendment be not approved. (**) Despite this opposition the proposal was approved as Amendment No. 1, March 21, 1935. (A.O. 99-20).

Thus through two proposed changes or additions to their Code, the Code Authority attempted to re-establish the plan complained of by the Department of Justice. Had it been successful in its sponsorship of the Merchandising Plan there would have existed the embarrassing situation of one branch of the government approving the very thing complained of by another.

3. Miscellaneous Proposed Amendments.

Two changes suggested by the Code Authority were designed to render more difficult evasions of filed prices. One of these dealt more specifically with the question of secret rebates and stated that the offering or making of any discriminatory payment in the form of cash, refund, commission, services, etc., would constitute a violation of the Code. This proposal was made early in the period of Code operations but was withdrawn when the Code Authority learned that if the Code was opened for consideration of amendments the whole document immediately became vulnerable. The second of these proposed alterations would have required members of the industry, when quoting or selling an industry product in connection with any other product, labor or service, to quote and invoice these other products or services separately and at not less than their respective current market value.

Two further proposed mutations of the Code would have had the effect of limiting the freedom of members in determining their prices, terms and conditions of sale. In the group of proposals submitted in the spring of 1934 (this was the group withdrawn by the Code Authority) appeared one which would have permitted the Code Authority, if they found that an emergency existed, to cause to be determined the lowest reasonable cost of products. This cost, upon approval of the Administrator, was to constitute the lowest price at which goods could be sold or offered for sale during the emergency. The other of these proposals

---

(*) Code History, P. 24

(**) Memorandum dated February 15, 1935 from Willard Thorp to NIRB. (In NRA files, Amendments Folder).

would have limited the amount and effective length of bonds and guarantees. It was recommended that the amount of the guarantee be limited by the actual cost of the products and that its duration not extend for more than two years. This recommendation was pending at the time the Code expired.

One suggested addition is interesting because of its implications. Included in the previously mentioned proposals, which were withdrawn, was one permitting "Secondary Manufacturers" to quote prices and sell products at a net price lower than those quoted by "Primary Manufacturers". To this suggestion the required two-thirds majority of the members of the industry consented. If put into operation this plan would have allowed small manufacturers, with the consent of the other manufacturers and after having demonstrated a need to quote and sell products 7½ per cent below the price quoted by the larger concerns. In order to avail itself of this opportunity the recipient was required to agree to throw his books open to investigation every three months. If at the end of any period it appeared that the business of the favored concern was increasing more rapidly than the of the industry in general, the differential would be decreased in proportion. Though this proposal was never presented for consideration by the Administration, Mr. Ralph Muller, Vice President of the Cooper Company (one of the "Secondary" manufacturers) stated in an interview, January 6, 1935, that the principle had been put in operation by the Code Authority. In explaining the reason for this seemingly altruistic spirit on the part of the larger members of the industry, Mr. Abrahams, (*) Chairman of the Code Authority remarked that it was deemed wise to "control" in this manner the small members rather than to permit them to operate without "control". The first problem that presented itself was how, in the absence of fixed prices, could the "Secondary" manufacturer determine the price at which he could offer his products for sale. Unless the prices of the "Primary" manufacturers were uniform and determined, a filed price that was 7½ per cent below the price of one manufacturer might be more or less in relation to the prices of another.

II. ADMINISTRATION BY N.R.A.

As measured by the administration of other codes, that exercised in regard to the code for the Asphalt Shingle and Roofing Industry was rather vigorous. As has previously been mentioned, Assistant Deputy Administrator Lawson in the beginning established the policy, which was continued during the life of the Code, of reviewing the Bulletins and Explanations of the Code Authority before they were distributed to the industry. While it does not appear that the contents of these documents were frequently altered as a result of these previews, the fact that the Code Authority was aware of this supervision, might in itself have acted as a desirable influence. It should be noticed that the Code Authority rather welcomed this supervision. The Institute and most of the members of the Code Authority were operating under the cloud of the Department of Justice complaint and were glad to have an official approval of all of their activities.

(*) Interview, January 10, 1936

When it was felt by the NRA officials that an activity or undertaking of the Code Authority was beyond the bounds of its powers, no hesitancy was displayed in calling the matter to the attention of the responsible parties. This spirit was exemplified in the action of the Assistant Deputy and his Advisers in regard to the unauthorized activities; (*) and, is further indicated by the price study conducted by the Research and Planning Division. (**)

At no time did the Administration find it necessary or desirable to issue any unusual or unique Administrative or Executive Orders. There were a total of twenty-one Administrative Orders, all of which, with the exception of Order No. 99-20 approving the Liquidated Damages Amendment, were routine in nature or pertained to wages and hours. It is felt that none of these merit special attention.

(*) Supra, p. 544 and ff.
(**) Supra, p. 545.

CHAPTER VII

COMPLIANCE

At first glance it would appear that the problem of obtaining compliance with the trade practice provisions of the Code was never a matter of great concern. Only three trade practice violations were cited to the Compliance Division. This serenity, however, was apparent rather than real. In most instances of violations the Code Authority preferred to handle the complaint themselves and in many instances the allegations could not be supported by evidence. The reticence of the Code Authority with regard to submitting alleged violations to NRA for settlement may have been occasioned by dissatisfaction with the disposition of the few cases reported. This feeling grew out of the disposal of the Fry Case (*) which was a thorn in the side of the Code Authority throughout the life of the Code.

I. ENFORCEMENT AGENCY

It will not be necessary in this discussion to differentiate between the Code Authority as an enforcement agency and the Trade Practice Complaints Committee. By Administrative Order 99-12 creating a Trade Practice Complaints Committee, the Code Authority was named to constitute that body and by this Order the Code Authority was authorized to appoint such committees to assist in the handling of complaints as were deemed necessary. It is thought that this privilege was seldom exercised, the Trade Practice Committee itself handling most of the complaints.

The Order of Approval also set out rules to govern these agencies in the handling of complaints. In general the procedure required that when a complaint was filed the respondent must be notified within five days and allowed ten days in which to file a reply. If at the end of the alloted period no response was forthcoming the respondent should again be notified, this time by registered mail. Should the alleged violator plead guilty to the accusation, and there existed extemuating circumstances which would have the effect of an avoidance of any animus ferandi, the case might be closed. On the other hand, should the accused admit the act alleged but take issue on the legality of that act, he should receive a third notification citing the provision or provisions violated and fixing the time and place of the Hearing. The Hearing held, should there still be differences of opinion, the case could be appealed to the Trade Practice Complaints Committee, assuming that the original hearing was held by one of their agencies; or the case, with all documentary evidence, could be submitted to the NRA for settlement.

No particular effort has been made to explain the technicalities of procedure under which complaints were adjudicated, as the question of jurisdiction or manner of handling was never an important issue in either the court of first instance or in the appellate division.

(*) Infra, p. 555.

II. METHODS OF GAINING COMPLAINCE

Most violations cited under the Code fell into the class of technical infringements arising out of honest mistakes in filing and estimating discounts. In such instances the problem of the Committee was simple. The error was called to the attention of the violator and the necessary correction was made.

In the more stubborn cases the threat of NRA procedure was used to obtain compliance. In the early period of the NRA this weapon was reasonably effective; however, as the Administration compliance activities became retarded by policy determinations, which were delayed in their appearance and which were even slower in operation, this threat ceased to be a menace to violators. It is possible that this condition furnished the incentive for the liquidated damages amendment. By virtue of this provision members of the Code were required to post surety bonds as guarantees of adherence to the Code provisions, and in cases of violations "fines" could be levied by the Trade Practice Complaints Committee. Whether or not this would have been an efficacious instrument can be judged only by pre-code experience, as its proposal and approval occurred so late in the Code period that it was never put into operation. The success of such an agreement under the Institute leads to the conclusion that had the plan been put into operation the number of violations would have decreased very markedly.

III. NUMBER OF VIOLATIONS

The available information relative to complaints and procedure is not sufficient either in quantity or quality to permit an enlightened discussion of the nature of the cases which were called to the attention of the enforcement agencies. An occasional reference in the Minutes of the Code Authority indicate only that the problem existed. As far as possible this information has been supplemented by interviews with members of the Code Authority. (*)

The Minutes of the Code Authority meeting of April 9, 1934, report 128 complaints of which 47 were pending, and the Minutes of May 1, 1934, report 183 complaints with 54 pending. Little can be derived from these figures save that complaints were filed in considerable numbers. What happened in the cases disposed of and the nature of the accusations are not shown.

According to members of the Code Authority, in only two instances was there failure to file prices and in one of these it appeared that the respondent did not know that this was required. The other refused to file on the grounds that he had not offered products for sale but in the event he should, prices would be filed in accordance with the Code provisions. In the latter instance, the Lloyd A. Fry Roofing Company of Chicago was involved. The complaint is difficult to analyze since the case was probably complicated by personalities. The respondent was the same company which had been

(*) Interviews with L. R. Hoff, Herbert Abrahams and Ralph Muller, January 7-10, 1936

involved in differences with the Institute and the Patent and Licensing Corporation in 1928, and it may be that the difficulties arose out of ill-will or persecution. Seemingly, Fry was engaged in manufacturing products for one of the mail order houses and was not engaged in competition with other members of the industry. As final disposition was never made of the case, its merits can hardly be discussed here.

More vexations but less serious were the allegations of evasions of filed prices and misclassifications. In many instances, of course, accusations arose out of loss of customers or failure to secure bids and they lacked substantiating evidence other than the suspicions of the complainant. In most cases where actual violations were found they were shown to be the result of an unintended mistake. As evidence of this, members of the Code Authority stated that there were very few "repeaters". There were, however, some half dozen "habitual criminals" who were frequently cited for having granted rebates or in some manner violated their filed prices. (*)

IV. SUCCESS OF ENFORCEMENT AGENCIES

From the above information, it is difficult to evaluate the success of the enforcement bodies. Briefly, the facts show the complaints filed were numerous, but measured by complaints pending and those submitted to the NRA the efforts of enforcement were quite successful. The sponsorship of the liquidated damages amendment as an agency of compliance would indicate, however, that it was not all that it might or should have been.

(*) Interview with members of the Code Authority, January 7-10, 1936

CHAPTER VIII

ECONOMIC EFFECTS OF PRICE FILING

A complete discussion of the economic effects would necessitate separate consideration of the interests of the different groups which might be affected by the pricing practices of the industry. Among the classes which would have to be considered are the manufacturers, distributors (including the various classes) and consumers. Neither time nor space will permit such a detailed treatment of the interests of these many groups. In lieu of this, detailed consideration will be given here the more general aspects, centered around prices and price movements.

I. PROMOTION OF PRICE STABILITY

The expression "price stability" should be considered in a relative sense. From any other perspective there is seldom, if ever, such a thing as stable prices. In its stricter interpretation the term signifies a fixed and immobile level that would lose its characteristic of stability with each change. Prices, therefore, will herein be considered as more or less stable as price changes occur more or less frequently during a given period.

According to testimony given in the suit between the Patent and Licensing Corporation and Weaver-Wall, prices normally changed in the Industry about eight or ten times a year. (*) Evidence in the same case stated that prices had not changed between 1930 and April 11, 1932. (**) Figures of the Bureau of Labor Statistics do not bear out this statement of no price changes during the above period, but do indicate considerable stability. Throughout the twelve months of 1931, according to the Bureau of Labor Statistics, the average wholesale price of medium roofing was $1.32 per square with comparable rigidity being evidenced in other products. A survey of this compilation from 1926 through September 1935 indicates considerable more stability during periods of vigorous enforcement of the price filing agreement. (See table page 124)

It may be said without too much fear of contradiction that price publicity in the Asphalt Shingle and Roofing Industry aided in the stabilization of prices. Whether or not this is an indictment of price filing practices is largely a matter of opinion. Eliminating consideration of price trends or price levels, stability of prices in no way appears vicious.

Prices can hardly be treated in the abstract manner just indicated. The term price stability, being used as a relative one, implies some price movement. The more important question is the direction of changes. Were these few fluctuations uniformly upward or uniformly downward or were they as apt to move in one direction as the other? Some light will be thrown on this subject later in the discussion.

(*) Patent and Licensing Corporation V. Weaver-Wall. Transcript of the hearing, p. 1068.

(**) Ibid. p. 1049.

II. PRICE UNIFORMITY

Prices in the Asphalt Shingle and Roofing Industry were and are uniform. The treatment of price uniformity could almost start and stop with that sentence. On rare occasions and for short periods of time it is possible to find examples of lack of complete uniformity, but those instances are the exceptions rather than the rule. So perfect was this accord that generally there was absolutely no variation in prices, terms or conditions of sale.

The identity which was apparent in prices also existed with regard to merchandising plans, which were a part of the price filing practice in this Industry. In the earlier agreement the Institute adopted a uniform plan of customer classification and attempted to have one included in the Code. Failing to get the consent of the Administration for the inclusion of this provision, the individual members published a plan which was applicable to their products and customers. The inability of the sponsors to have the uniform merchandising plan approved could have had no more serious results than inconvenience. A survey of the plans published by the different companies verifies the fact that they coincided almost to the point of identity of verbiage. (*)

The similarity of prices is best pointed out by citing a single instance, during the Code period, when there appeared to be a lack of uniformity. The first filing showed a list price, quoted by most companies, of $4.55 per square for individual Shingles to wholesale carload distributors, with a 2 per cent cash discount and either a 5 percent sales discount, when the merchandise was shipped directly to the consumer or dealer, or a 3 per cent stock discount when shipped to the distributor, the 3 or 5 per cent deduction to be applied before the cash discount. One company filed a list price of $6.25 per square for the same product to which was applied, in addition to the above discounts, a 33.3 per cent reduction as a trade allowance. In both cases the net price quoted was $4.18. (**)

This uniformity of prices is not conslusive as to price control. Products in the Industry were standardized to a point of exactness; the market was national rather than local, and the price structure embodied the principle of freight equalization. Each and all of these factors would tend toward a uniform price. At the same time price uniformity taken in connection with abnormally high prices may be strong evidence of price control.

A. Merchandising Plans.

It has already been noted that prior to the Code the Institute had sponsored a uniform merchandising agreement and that efforts were made to have such a plan incorporated into the Code. It was provided in Article VIII of the Code that each member of the Industry should issue his own merchandising plan free and independently of every other member, subject to such changes and alterations as were desired, so

(*) In NRA Files, Prices Folder.

(**) See Table, p. 568.

long as those revisions were publicised in the same manner as the original plan.

In the light of the previous discussion of the 1929 Merchandising Plan and its complexity of operation(*), a survey of those filed under the Code may be of value. Again uniformity is evident and the plans are so like the one of 1929 that it will only be necessary to point out the differences. Customer classes were maintained with very little change in title and with no great deal of difference in definition and methods of qualifying. The former jobbers were noted as Wholesale Carload Distributors, and to qualify for this class a dealer had to meet all the requirements laid down by the Institute in its former agreement, with two exceptions -- (1) it was no longer left to the determination of Dun and Bradstreet, and (2) rather than maintain an average stock of 40,000 pounds it was now necessary to have on hand an average stock of 80,000 pounds. For other customer classes there might have been similar unimportant differences. The identical systems of shipping zones, methods of transportation, freight equalization and quantity discounts were continued.

III. PRICE AND PRICE MOVEMENTS.

An intelligible treatment of prices as evidence of the economic effect must consider demand and 'production costs', as they would tend to influence prices. Certain fundamental economic theories are involved which will aid in the interpretation of price changes. It is generally accepted, for example, that with supply remaining constant, prices will vary with demand and it is also generally accepted that prices bear some relationship to costs of production. A brief discussion of these two factors may be of some value.

It was stated in Chapter II above(**) that demand for the products of the Industry arose out of the volume of business of the building division of the construction industry. For this study relative figures are more enlightening than are absolute figures. Bureau of Labor Statistics based on building permits show a decrease in total building in 1933 of about 13 per cent, and increases of 5 per cent and 170 per cent respectively in 1934 and 1935. These figures would indicate that the low for building construction was reached in 1933 and that it remained fairly constant during 1933 and 1934. Demand, for the products of the industry failed to increase between 1933 and 1934, but increased appreciably in 1935. Prices, assuming they were affected by no other factor, should have reflected the changes in demand.

Variations in costs of production are more difficult of determination. In its report on the administration of the Code, the Code Authority stated that labor costs had increased 14 per cent during the Code Period and that the cost of raw materials had increased in amounts varying from 20 per cent to 75 per cent.(***)

(*) Supra, p. 506 & ff.
(**) Supra. p. 516.
(***) Report of the Administration of the Code of Fair Competition for the Asphalt Shingle and Roofing Industry, p.24. (In NRA Files, Code Authority Folder).

It was stated at that time that the cost of dry felt had increased from 61½¢ per hundred pounds to $1.28, after which there was a reduction in price to $1.00. Assuming this later figure to be the average price, the percentage increase in the cost of production would be approximately 15 per cent. (It was stated at the same time that the cost of felt represented about 20 per cent of the total cost). Labor costs, as previously stated, (*) in 1931 represented about 9.0 per cent of the value of the product, which would be approximately 6.3 per cent of the cost of production. The 14 per cent increase in labor costs would, applying this ratio, represent an increase in the cost of production of .85 per cent. The other item of costs mentioned in the report was flux oil which had increased 20 per cent. Granting that the cost of flux oil represented as large a percentage of the total cost as did felt, which is probably a generous assumption, this would have resulted in a 4 per cent increase in the total cost. The total increase in costs is estimated at 19.85 per cent of costs or 12.54 per cent of the value of the product. (1935 material and labor costs, including fuel and purchased electrical power represented 63.2 per cent (**)).

Price movements during the above period maintain some relation to production costs but appear to have moved in opposition to demand. This most unusual reaction would indicate that prices might have been increased on a falling market to maintain profits. Such an inference demands a closer scrutiny of prices and shipments. Tables 2 and 3 seem to bear out this assumption. It may be seen from these tables that almost without an exception when demand for the industry's products, as measured by shipments, decreased, prices increased, and, conversely, when demand increased, prices decreased. Such a condition would seem to offer only one conclusion; controlled prices are little affected by demand and the tendency is to try to maintain profits by increasing per unit profits.

It is hardly possible to compare price movements in this industry under price filing with price movements during periods when no price agreements was in operation. Since 1926 some form of price publicity has been in effect and price data are not available for earlier years. The comparisons must therefore be made between times when the agreement was observed and times when it was generally not observed. The original price publicity agreement became operative at the beginning of 1926 and prices at that time were 130.8, based on 1929 average. This high level was continued until about November, 1927 and no doubt broke down because of price wars in the Industry. The decline in the latter part of 1927 and in the early part of 1928 occurred, despite the fact that building construction increased during that period. In the light of what has previously been stated, this movement is not surprising and is apparent through the period for which prices are available, though seemingly better regulated when the agreement is being more closely observed. More enlightening is the marked decline between the months of October and November of 1927 and the great increase between May and June of 1928. In comparing prices in these

(*) Supra, p. 519.

(**) The Asphalt Shingle and Roofing Industry, Industry Statistics Unit, January 1936, Table IV, p.8. (In NRA Files).

latter two months, the Industry meeting of May 1933 should be recalled. It has been stated that prices were discussed at this meeting. Such statements have been and will no doubt continue to be denied. In the face of these conflicting contentions, it seems impossible to explain the 19.6 increase in price on any grounds other than collusion. Through a close analysis of prices it is possible virtually to trace the degree of success, as measured by compliance, with which price publicity has met.

Absolute prices rose sharply during the Code period. Slate surfaced roofing increased from $1.43 per square in May, 1933 to $1.77 per square in June, 1935, or an increase of 19.6 per cent; Strip Shingles during the same period moved from $3.34 per square to $4.62, or an increase of 38.3 per cent; Individual Shingles from $3.85 to $5.00, or an increase of 29.9 per cent. Medium Prepared Roofing, alone, decreased, the price being $1.47 per square in May, 1933 and $1.44 in June, 1935, or a decline of 2.0 per cent. The increase, as measured by the index of wholesale prices, for the Code period was 16.4 per cent.

A goodly portion of this increase was accomplished from June 1933 through December 1934, a period during which demand was increasing very slightly. From January 1935 to June 1935 the index price remained fairly constant fluctuating between 112.4 and 114.9, but by September it had dropped to 111.1. During this year building construction increased 170 per cent over 1934. No doubt figures for more recent months would show a continued decline in prices.(*)

The conclusion as to the effect on prices, of price filing under the Code, must be that prices were better controlled and in general moved in opposition to the normal trends as effected by demand.

Abnormally increased prices, of course, affect the consumer adversely. An increase in the price of roofing obviously means an increase in building costs. Little complaint was voiced by consumers against prices because the costs of roofing materials represents a very small per cent of the total cost of a building. It is conservatively estimated that such costs are only about 2.0 per cent of the cost of a building. A twenty per cent variation in the price of roofing would then result in only .4 per cent variation in the total cost of the structure.

Despite the imperceptibility of the effects of price variations in roofing materials on the total cost of construction, the tendency of prices to fluctuate in opposition to demand, coupled with similar movements in other building materials, would augment the seasonal and cyclical variations and would rebound to the Industry by changing a malignant condition into a pernicious one.

IV. POSITION OF DISTRIBUTORS

The position of distributors was not vitally affected by price levels or price trends, but it should be born in mind that the mer-

(*) Mr. Muller of Cooper Company stated, in an interview January 10, 1936, that there had been 14 price changes since the Schecter decision and that each of these changes had been downward.

chandising plans were a definite part of the pricing structure in this Industry. The discussion of the economic effects of price filing thus far has centered around prices, with the position of distributors mentioned only in relation to uniform prices.

By the individual merchandising plans, distributors were placed in certain groups which determined the amount of discounts that they would be allowed. The tendency of these plans to be uniform in regard to customer classifications definitely fixed the position of these consumers in relation to one another. If a particular distributer was placed in the Less Than Carload Wholesale Distributer class by one member of the industry, he would be so placed by all members. In instances where there was lack of uniformity in classifying, these differences were generally eliminated at the "misclassification meetings". The problem, therefore, so far as the distributor was concerned, was an individual one (*); consequently objections were from single distributors who complained of the injustices of their position rather than voicing any opposition to the plan.

A further exception was the objection of Mail Order Houses. This group opposed the system of price filing as well as that of customer classification. Filing was opposed on the ground that it was a violation of a confidence which affected not only the seller, but also the purchaser, while the opposition to customer classification revolved around the fact that this group was in danger of losing its favored position as buyers. Though Mail Order Houses handled only about 5 per cent of the Industry's products, it was contended that they deserved special prices as a result of quantity purchases. These objections were of no avail and as a result Mail Order Houses began manufacturing. One member of the Industry stated that price filing under the Code definitely put Mail Order Houses in the roofing industry.(**)

V. INCREASE IN THE NUMBER OF MANUFACTURERS.

In addition to this induction of Mail Order Houses into the field of production, the Code Authority reported that five companies had entered the Industry by May 8, 1934. (***) Whether more new capital came in between May, 1934 and May, 1935 is not known, though it may logically be inferred, since the report was made following the Schecter decision and no mention was made of companies entering the field after May, 1934, that no further additions were made.

(*) One exception to this individuality of objections is the case of retail lumber dealers, who have for years contended that they should be allowed a larger discount, in view of the fact that such concerns handle about 70 per cent of the sales of the Industry. The main force of this objection preceeded the adoption of the Code and has been mentioned previously in Chapter V.

(**) Mr. Steman of Weaver-Wall in an interview, January 13, 1936.

(***) Report of the Administration of the Code of Fair Competition for the Asphalt Shingle and Roofing Industry, p. 8. (In NRA Files, Code Authority Folder).

This coming in of new capital is significant when it is recalled that money was invested, probably, more cautiously during this period than at any other time in the history of American industrial development. The relative amount of capital represented by the five new companies can not be ascertained. Numerically they represented about 18.5 per cent of the total number of members of the Industry. However, it is reasonably certain that, as measured by capital invested, it would be only a very small part of the total in the industry. The evidence is only indicative rather than conclusive, but the implications should not be lost.

A. Limitation or Control of Production.

At the same time that new capital was coming in, an amendment to the Code was being sponsored by the Code Authority to limit and restrict the use and expansion of productive equipment. An inventory had been made which showed that only 29.9 per cent of the productive capacity was in use and that twelve fully equipped factories were then inoperative. In addition, it was pointed out that twenty factories had been closed in the five years preceding the Code. It is quite certain that the closed factories were as a result of retirement by the producing members, since during that period only six factories went into the hands of receivers and there were no bankruptcies.

As a result of these diametrically opposed movements, there arises an anomalous situation which all but defies economic interpretations. There exists an industry in which because of prices, production, etc., present members deem it economically expedient to remove productive equipment from the active field, and which, at the same time as measured by the same factors, remains inviting enough to attract capital when capital is deaf to most invitations.

VI. DIVERSION OF SALE TO SUBSTITUTE PRODUCTS

It is doubtful whether or not prices of asphalt roofing materially affect the demand as measured by use of substitute products. This unusual situation is true for several reasons, most of which have been previously noted but will be repeated here: the cost of roofing is a negligible factor in the total cost of the structure; asphalt roofings are generally thought to reduce fire hazards; much attention has been given to increasing the demand by increasing the esthetic appeal; and, as compared to other roofing materials, excepting wooden shingles, asphalt roofings are reasonable in price.

The tendency from 1929 to 1934 was for asphalt roofing to gain business at the expense of wood shingles.(*) It seems, therefore, to resolve itself to the question of whether demand would not have increased more rapidly had prices been reduced. To answer that question would necessitate an assumption which could not be supported. The only noticeable indication that the Industry might have suffered to the benefit of substitute products is the decrease in shipments in 1934 as compared with 1933 when building increased slightly.

(*) Supra, p. 520.

CHAPTER IX

OPINIONS AND ATTITUDES OF INTERESTED PARTIES

The same concerted opinion among the members of the Industry, as to the desirability of price filing, seems to have existed at the end of the Code as was apparent during the period of Code formulation. In no instance does it appear that a member operating under the Code felt that the plan in any manner worked a hardship on any individual firm or on any general class of members. This fact, better than any expressed opinion, depicts the attitude of the industry toward the system under which it was operating. This is true only with regard to the scheme considered as a whole and not to any specific provision or proposal. As previously noted, (*) some particular phase, as the liquidated damages amendment or the proposed Merchandising Plan, drew opposition from among the membership of the Industry. From time to time suggestions were made toward its strengthening, but never that it should be discarded.

This unanimity should, in itself, incite skepticism. Under ordinary or even unusual circumstances it would be hardly possible to design a plan which would be so eminently satisfactory to every member of the industry, considering both their independent and relative position. All but the most naive, when presented with a Utopia, would look around to see who was paying the "piper". Admittedly prices in the industry became more uniform and more stable, as did customer classes. Those factors, alone, would not prove the existence of price fixing, but when coupled with abnormally high prices, a condition which was also present in this industry, would create circumstances which would permit a presumption that price fixing did exist. That members of the industry discussed and determined prices before they were filed has been confirmed by one of the members (**) who also stated that the Code plan was almost identical with that of 1929.

PERSONAL OPINIONS OF INTERESTED INDIVIDUALS

A. F. J. Patchell, Administration Member of the Code Authority(***)

(*) Supra. pp. 545. and ff

(**) Interview with Mr. Stegman of Weaver-Wall Company, January 13, 1936.

(***) Memorandum dated August 9, 1935, from F.J. Patchell to Beverly Ober.

In his report to the Deputy Administrator on the history and administration of the Code, Mr. Patchell submitted a rehash of the Bulletin prepared in the office of the former Code Authority, then the office of the Institute. In this Bulletin it was pointed out that price filing had been beneficial to the industry and that this was accomplished without any resulting evil effects, e.g., high prices, price uniformity, price determination, etc. It was noted that five new members had entered the industry as contrasted with the mortality in the years immediately preceding the Code. Prices for a given period were quoted which tended to show that price increases had not been unusual in the face of the increased costs.

B. J. S. Bryant, Secretary to the Code Authority and Manager of the Institute. (*)

Mr. Bryant is of the opinion that price publicity is a very desirable and necessary agency in this industry. The plan as operated under the Code was quite satisfactory but would have been strengthened by a uniform merchandising plan, which was never approved, and by the liquidated damages agreement, which was approved in April, 1935. Though not admitting that the five-day waiting period might lead to coercion, Mr. Bryant stated that the industry had never been enthusiastic over it, and it has been included in the Code only because such provisions had been granted other industries.

It is Mr. Bryant's belief that publicity prevents price wars and that without it manufacturers would be at the mercy of "chiseling" buyers.

C. Mr. Stegman, Vice-President, Weaver-Wall Company (**)

Talking with less reserve than did Mr. Bryant, Mr. Stegman stated that he was frankly surprised when Codes were being drafted, to find that the administrative agency for the Asphalt Shingle and Roofing Industry was to be dominated by that institution and those individuals against which were pending government indictments charging illegal practices in restraint of trade. His comments were as follows:

> The plan was dangerous. It was subject to the dictation of the large members and would, in the end, tend to eliminate the small companies.
>
> There was collusion in prices, discussion generally taking place in advance of Code Authority meetings. Prices were abnormally high. The Weaver-Wall Company made more money in 1934 than ever before, showing a profit of from 15 per cent to 20 per cent on invested capital each month during the year.

(*) Interview, January 8, 1936.
(**) Interview, January 13, 1936.

A strong effort would have been made to put through the Merchandising Plan had the Code been continued. This plan was not feasible due to differences in merchandising policies of various companies.

The price publicity system was almost identical with that of 1929, complained of by the Department of Justice.

If the principle were justified by an emergency, that emergency no longer exists.

D. Herbert Abrahams, Chairman of Code Authority; President, Ruberoid. (*)

In discussing the Code provision and its administration, Mr. Abrahams was heartily in favor of price publicity but thought that a waiting period might lead to coercion and was of questionable value. Such a plan to be of real benefit must include prices, terms and conditions of sale, and customer classification with names and location of customers, and should provide for a liquidated damages agreement. Mr. Abrahams further commented as follows:

Price publicity is desirable in that it prevents "customer advantages", "price discrimination" and "ruthless price cutting".

"We want to get as much as our competitors will let us."

Prices and customer classifications became more uniform under publicity.

Equalization of freight rates cannot be avoided.

Smaller companies were much better off under the Code than they are today. There were no complaints from these companies under the Code, but they are numerous at present.

The voluntary agreement now before the Federal Trade Commission is not practical for this industry. The ten-day waiting period after prices go into effect before they are published is not possible of enforcement. "If I didn't know their prices the next day I would fire my salesmen."

E. Ralph Muller, Vice-President of the Cooper Company and Member of the Code Authority (**)

(*) Interview, January 9, 1936.
(**) Interview, January 10, 1936.

List Prices, Terms of Sales and Net Prices for Individual Shingles
by Principal Companies Granted to Wholesale Carload Distributors

Company	Date	List Price (Dollars)	Discounts			Commissions		Maximum a/ Allowance (Per Cent)	Net Price (Dollars)
			Trade (Per Cent)	Quantity (Per Cent)	Cash (Per Cent)	Sales (Per Cent)	Stock (Per Cent)		
Johns-Manville	November 30, 1933	4.35	—	2.0 - 5.0 (25-100 CL)	2.0	5.0	3.0	4.9	4.13
Flintkote	November 29, 1933	4.35	—	2.0 - 5.0 (25-100 CL)	2.0	5.0	3.0	4.9	4.13
Certainteed	November 24, 1933	4.35	—	2.0 - 5.0 (25-100 CL)	2.0	5.0	3.0	4.9	4.13
Philip Carey	November 30, 1933	6.52	33.3	2.0 - 5.0 (25-100 CL)	2.0	5.0	3.0	36.6	4.13

Source: Compilation by Statistics Section, NRA, from published price lists and merchandising plans.

a/ This allowance computed by considering only stock commissions and cash discount allowances.

The Cooper Company is a comparatively new member of the industry, having been organized in 1931. Both Mr. Muller and Mr. Cooper, President of the Company, were most enthusiastic in their support of price filing as it operated under the Code. They contended that such a plan, with the 15 per cent mark-up, prevented ruthless price cutting and permitted a fair price. Mr. Cooper proposed as an alternative for NRA the repeal of the Sherman Anti-Trust Act.

In discussing the preferential allowed "Secondary" manufactures, Mr. Muller stated that in the beginning lower list prices were quoted. This tended to disrupt the price structure of the industry and the method was changed to an increase discount. The amount of the preferential for the Cooper Company was decreased during the life of the Code, of their own volition, from 10 per cent to 5 per cent.

Without attempting to impeach the statements of the various proponents of price filing, it should be stated that; there was price uniformity in the industry; prices were high and they moved contrary to demand; and there were indications of price control. That these conditions were caused by price publicity cannot be said without fear of contradiction; in fact the contradiction precedes the conclusion. It may be pointed out that under such a condition price publicity could be and no doubt would be an agency through which the program could be more effectively policed and more carefully regulated.

TABLE 2

ASPHALT SHINGLE AND ROOFING INDUSTRY
SHIPMENTS : PREPARED ROOFING

I-A Total Shipments of Prepared Roofing (Thousands of Squares) a/

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
Jan			2,141	2,421	2,383	1,395	1,759	875	1,100	1,277
Feb			1,856	3,375	1,556	1,381	1,724	1,719	1,051	1,118
Mar			4,277	4,239	2,240	1,456	1,875	2,773	2,221	2,032
Apr			3,672	4,583	2,727	2,202	2,274	2,321	2,946	2,974
May			3,648	4,583	2,714	2,230	1,610	2,904	2,357	2,882
Jun			4,196	3,756	2,384	2,006	1,529	2,137	1,326	2,213
July			2,895	3,325	2,151	2,017	1,707	2,793	1,743	2,321
Aug			3,070	2,903	2,544	2,237	2,799	1,881	3,762	2,768
Sept			3,187	3,011	3,506	2,597	3,103	2,153	1,944	3,102
Oct			3,453	3,308	3,259	2,302	2,573	2,671	2,426	3,130
Nov			2,470	2,326	1,484	1,765	1,202	1,621	1,941	
Dec			1,672	2,035	1,126	983	608	889	1,373	
Average			3,045	3,322	2,323	1,881	1,897	2,061	2,016	

I-B Shipments of Grit Roll Roofing (thousands of squares) b/

TABLE 2 (Cont.)

I-B Shipments of Grit Roll Roofing (Thousands of Squares) b/

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
Jan			514	485	493	322	385	198	220	368
Feb			486	717	338	330	414	353	227	278
Mar			1,237	1,039	581	333	491	532	430	464
Apr			1,013	1,118	676	533	606	524	560	606
May			995	1,129	731	570	377	714	600	586
Jun			1,157	988	653	520	378	574	336	494
Jul			830	983	612	532	389	693	407	576
Aug			853	829	655	568	647	512	790	667
Sept			841	826	872	711	764	504	547	834
Oct			824	836	922	574	630	570	608	850
Nov			529	532	372	374	271	337	462	
Dec			330	509	242	197	140	175	345	
Average			801	833	596	464	458	474	461	

a/ Sum of Shipments for Grit Roll Roofing (I-B), Shingles, All Types (I-C) and Smooth Roll Roofing (I-D).

b/ Bureau of the Census monthly release Prepared Roofing, 1933 to date, prior to 1933 data taken from Survey of Current Business.

DIVISION OF REVIEW, NRA - Industry Statistics Unit, ELG. 1-15-36.

TABLE 2 (cont.)

ASPHALT SHINGLE AND ROOFING INDUSTRY
SHIPMENTS : PREPARED ROOFING

I-C Shipments of Shingles, All Types (Thousands of Squares) a/

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
Jan			428	611	665	299	282	119	155	247
Feb			429	859	309	337	242	329	183	257
Mar			1,243	1,116	597	421	303	528	424	555
Apr			1,153	1,402	860	702	528	493	748	908
May			1,230	1,538	894	695	502	698	637	991
Jun			1,313	1,316	807	643	431	458	406	739
Jul			870	1,004	736	612	451	641	448	635
Aug			960	997	868	602	703	490	850	815
Sept			952	954	1,196	689	878	451	455	766
Oct			1,025	970	763	600	656	491	659	869
Nov			732	633	370	393	192	352	483	
Dec			500	576	302	214	107	164	315	
Average			905	998	697	517	439	434	480	

I-D Shipments of Smooth Roll Roofing (Thousands of Squares) b/

TABLE 2 (cont.)

1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
Jan		1,199	1,325	1,224	773	1,092	557	725	663
Feb		941	1,799	709	714	1,068	1,038	641	583
Mar		1,797	2,084	1,062	702	1,081	1,712	1,367	1,012
Apr		1,506	2,063	1,191	967	1,140	1,304	1,638	1,460
May		1,403	1,916	1,088	965	732	1,492	1,120	1,304
Jun		1,726	1,452	924	843	720	1,105	583	980
Jul		1,195	1,338	803	873	867	1,450	889	1,100
Aug		1,257	1,077	1,021	1,067	1,449	880	2,123	1,286
Sept		1,394	1,231	1,438	1,198	1,461	1,198	941	1,501
Oct		1,604	1,502	1,575	1,198	1,287	1,610	1,158	1,461
Nov		1,209	1,161	742	998	739	932	996	
Dec		842	950	583	571	361	550	713	
Average		1,339	1,492	1,030	900	1,000	1,153	1,075	

a/ Bureau of the Census monthly release Prepared Roofing, 1933 to date, prior to 1933 data taken from Survey of Current Business.

b/ Bureau of the Census monthly release Prepared Roofing, 1933 to date, prior to 1933 data taken from Survey of Current Business.

DIVISION OF REVIEW, NRA - Industry Statistics Unit, ELG. 1-15-36.

TABLE 3

ASPHALT SHINGLE AND ROOFING INDUSTRY
PRICES : PREPARED ROOFING

II-A Index of Wholesale Prices of Prepared Roofing (1929=100) a/

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
Jan	130.8	132.0	113.9	91.6	99.0	106.0	100.5	100.0	109.2	113.6
Feb	130.3	132.0	111.6	90.7	99.0	106.2	97.6	86.9	102.8	112.8
Mar	131.8	130.3	99.3	90.9	99.0	106.2	98.3	87.3	97.0	112.4
Apr	133.2	128.1	100.4	97.6	99.0	106.2	99.1	88.5	98.0	112.5
May	134.7	128.7	100.6	102.5	99.0	106.2	97.0	95.9	103.1	114.3
Jun	135.6	128.7	120.2	102.8	99.3	106.2	90.6	100.7	105.4	114.9
Jul	135.9	128.5	122.2	103.8	99.3	106.2	83.8	101.9	107.6	114.5
Aug	135.9	129.1	122.2	104.1	100.1	106.2	86.4	104.3	111.6	111.3
Sept	135.9	129.3	122.7	103.9	104.5	106.2	95.6	104.9	113.2	111.1
Oct	135.9	129.3	123.5	103.9	109.8	106.2	102.6	107.0	113.2	
Nov	135.6	112.2	123.5	103.9	109.8	106.2	107.6	108.9	112.8	
Dec	135.4	113.1	100.6	103.9	109.8	106.2	107.6	108.9	113.3	
Average	134.2	126.8	113.4	100.0	102.3	106.2	97.2	99.6	107.3	

(Cont.)

TABLE 3. (Cont.)

II-B Items and Weighting Factors b/

Items	Weights
Slate Surfaces Roofing	11,599
Medium Prepared Roofing	14,627
Strip Shingles	4,966
Individual Shingles	4,463

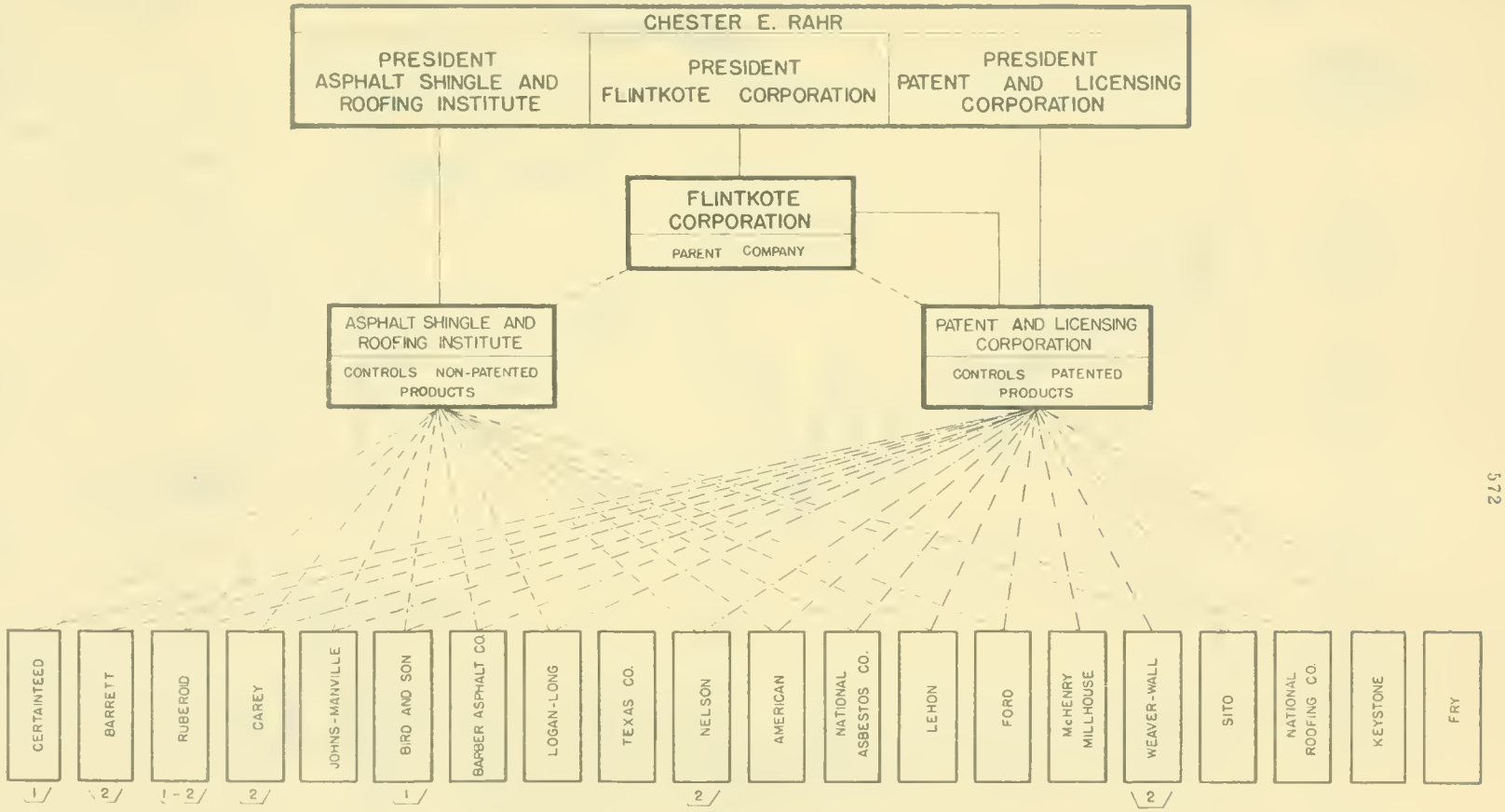
a/ NRA composite of Bureau of Labor Statistics series for "Roofing", slate surfaced, (III-A), medium prepared, (III-B), strip shingles (III-C), and individual shingles (III-D) weighted as shown in II-B.

b/ Weighting factors are the BLS quantity weights, given in "Quantity weighting factors, used in calculating Index Numbers, 1890-1934," March 1935.

DIVISION OF REVIEW, NRA - Industry Statistics Unit, ELG, 1-15-36.

I

ORGANIZATION OF THE ASPHALT SHINGLE AND ROOFING INDUSTRY
1930



KEY: 1 INDICATES "POOLING AGREEMENT" RELATIVE TO PATENT RIGHTS AND DIVISION OF ROYALTIES
2 INDICATES LITIGATION BY PATENT AND LICENSING CORPORATION FOR PATENT INFRINGEMENT
——— ORGANIZATIONAL RELATIONSHIP
--- MEMBER OF ASPHALT SHINGLE AND ROOFING INSTITUTE
— — — LICENSEE OF PATENT AND LICENSING CORPORATION

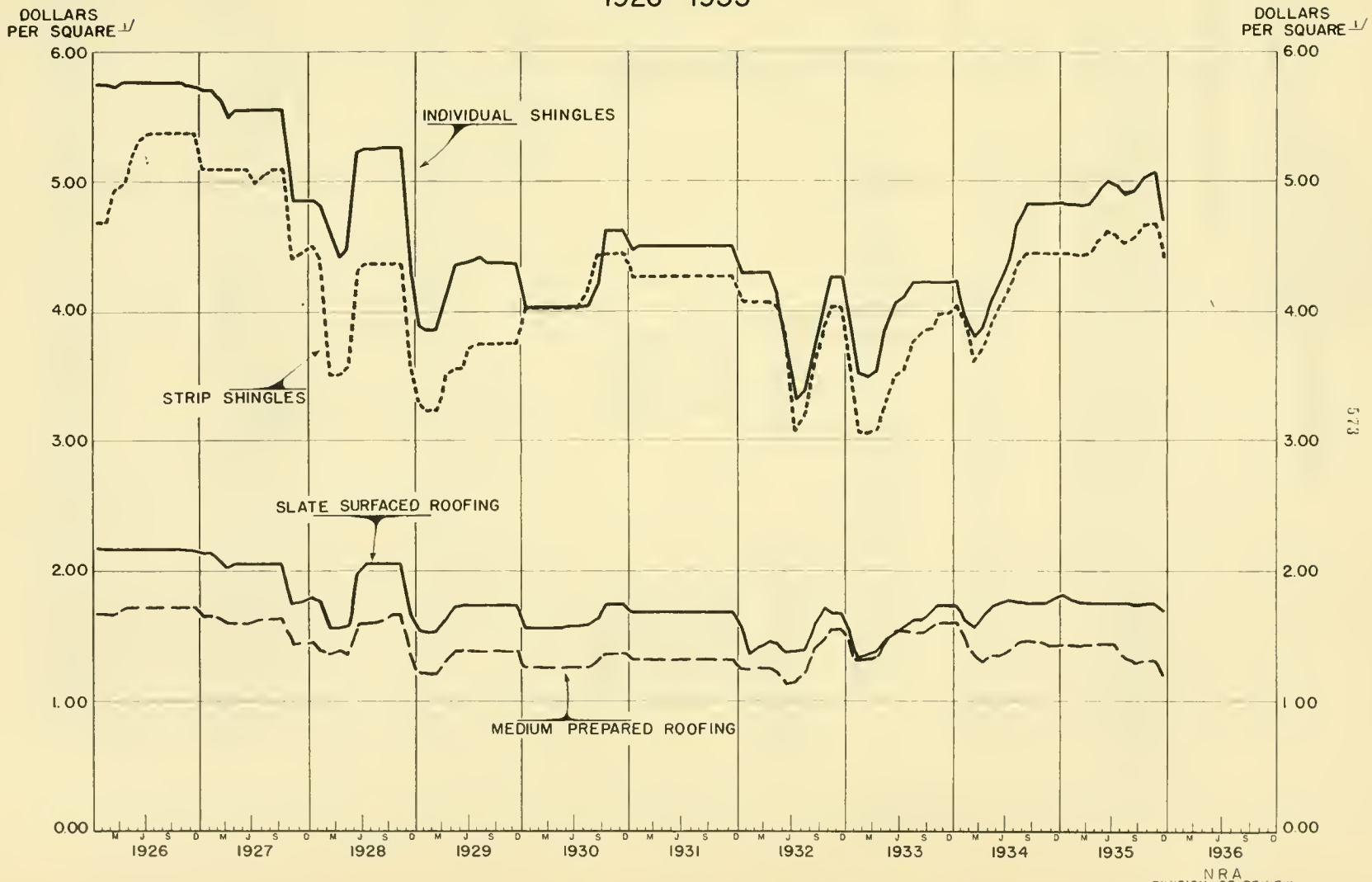
SOURCE:
COMPILED BY PRICE FILING STUDY UNIT NRA

NRA
DIVISION OF REVIEW
STATISTICS SECTION
NO. 504

572

WHOLESALE PRICES FOR INDIVIDUAL AND STRIP SHINGLES AND SLATE SURFACED AND MEDIUM PREPARED ROOFING

1926 - 1935



SOURCE BUREAU OF LABOR STATISTICS

NRA
DIVISION OF REVIEW
STATISTICS SECTION

APPENDIX B

PRICE FILING IN THE STEEL CASTING INDUSTRY

CHAPTER I

BACKGROUND OF THE INDUSTRY

I. GENERAL CHARACTER OF THE INDUSTRY

A. Definition and Extent

The Steel Casting Industry is a branch of the Foundry Industry. Its products are produced by pouring molten steel into a form or cast and allowing it to harden. The process involved is described in more detail in Subsection 9, page B-11 of this chapter below.

1. General Statistics

Salient statistics of the Industry are revealed in the following table: (*)

Table 1
NUMBER OF FIRMS, EMPLOYEES AND CAPITAL INVESTED, 1929-1934

Year	No. of Firms	No. of Employees	Capital Invested
1929	184	50,052	$272,000
1930	182	53,329	270,420
1931	177	47,707	265,000
1932	172	39,108	253,429
1933	168	20,038	220,737
1934	174	23,587	240,000

Source: Letters exchanged between Code Authority and Assistant Deputy Administrator.

The decline in sales during the depression was extremely drastic; 1933 dollar volume was less than 12 per cent of the 1929 level. Employment dropped 60 per cent during the same period.

2. Size and Distribution of Plants

This industry, at the time of application for the Code, August 17, 1933, consisted of about 179 active members. Table II shows their distribution according to capacity. It is interesting to note that 86 per cent of the foundries in number represented only 36 per cent of the total capacity.

(*) Various other statistical data dealing with industry operation and price filing results are included in Exhibit I, of this study.

Table II

STEEL FOUNDRIES IN THE UNITED STATES, ARRANGED IN GROUPS ACCORDING TO SIZE

Size of Foundry Rated Capacity Net Tons per Mo.	Number of Foundries	Total Capacity of Group	Average Capacity of Group	Per Cent of Total Number	Per Cent of Total Capacity
1 to 100	54	2,421	45	30	2
101 to 250	41	6,988	170	23	6
251 to 500	34	12,511	368	19	12
501 to 1,000	25	16,795	672	14	16
1,001 to 2,500	15	23,267	1,551	8	21
2,501 to 5,000	5	18,058	3,611	3	16
Over 5,000	5	29,698	5,940	3	27
TOTALS	179	109,733	613	100	100

Source: Letter to the National Industrial Recovery Board, dated January 2, 1935 from Steel Founders' Society of America.

Although steel foundries are to be found in nearly every state in the Union, the points of greatest concentration are in the following districts: Pittsburgh, Milwaukee, Chicago, Cleveland, Buffalo, Eastern Pennsylvania, Detroit and the Pacific Coast.

In a letter sent by the Steel Founders' Society, which was also the Code Authority, to the members of the industry, on August 17, 1934, it was stated that 173 companies, operating 189 active foundries, constituted the Steel Casting Industry. The tabulations attached to the letter showed the member foundries and their monthly capacities for each of the eight geographical divisions (explanation of Divisions below). Presumably four of the 193 foundries shown in the tabulation were not active. The tabulation follows:

TABLE III

NUMBER OF FOUNDRIES AND TOTAL MONTHLY CAPACITIES, ACCORDING TO GEOGRAPHICAL DIVISIONS, 1934

Division	Number of Foundries	Per Cent of Total	Total Monthly Capacity	Per Cent of Total
I	31	16.1	8,689 Tons	7.9
II	10	5.2	11,085 "	10.1
III	13	6.7	933 "	.8
IV	25	13.0	15,549 "	14.1
V	23	11.9	21,895 "	19.8
VI	41	21.2	26,642 "	24.1
VII	16	8.3	20,520 "	18.6
VIII	34	17.6	5,025 "	4.6
U. S. Total	193	100.0	110.338 Tons	100.0

Source: Letter from Steel Founders' Society of America to all foundries, dated August 17, 1934. (In NRA files).

Location of Divisions:

Geographical Division I comprises Federal Reserve District No. 1 and No. 3 (except that part of Pennsylvania west of a line drawn north and south through Altoona, Pennsylvania) and No. 5 (except West Virginia and North and South Carolina) and New York State east of a line drawn north and south through the most westerly point of Schenectady, New York.

Geographical Division II comprises Federal Reserve District No. 2 (except that portion included in Division No. I) and Erie, Pennsylvania.

Geographical Division III comprises Federal Reserve District No. 6 and No. 11 (except southeastern Arizona, southern New Mexico, and Texas west of a line drawn north and south through Haymond, Texas) and all of North and South Carolina, Tennessee, Mississippi, and Alabama (except Jefferson County).

Geographical Division IV comprises Federal Reserve Dostrict No. 4 (except Erie, Pennsylvania, eastern Kentucky and Ohio) and West Virginia, and that part of Pennsylvania not included in Division I).

Geographical Division No. V comprises Federal Reserve District No. 4 (except Pennsylvania).

Geographical Division VI comprises Federal Reserve Districts Nos. 7 and 9.

Geographical Division VII comprises Federal Reserve District No. 8 (except Tennessee, Mississippi and Arkansas) and No. 10.

Geographical Division VIII comprises Federal Reserve District No. 12 and that part of FederalReserve District No. 11, not included in Division III.

Compadies operating two or more foundries and the divisions in which they are located are tabulated on the following page.

TABLE IV

COMPANIES OPERATING TWO OR MORE FOUNDRIES AND THE DIVISIONS IN WHICH THEY ARE LOCATED

(Including Active Foundries Only)

Company	Number of Foundries--Each Division								Total
	I	II	III	IV	V	VI	VII	VIII	
Bethlehem Steel Co.	2								2
Eastern Steel Castings	2								2
General Steel Castings Co.	1						1		2
American Steel Foundries				1	1	1	2		5
Pittsburgh Steel Foundry Corporation				2					2
Continental Roll and Steel Foundry Company				2		1			3
Ohio Steel Foundry Co.					2				2
National Malleable and Steel Castings Co.				1		2			3
Sivyer Steel Castings Co.						2			2
Columbia Steel Company								2	2
Electric Steel Company					1			1	2
Kay Brunner Steel Products, Incorporated								2	2
Western Steel Casting Co.								4	4
Total	5	0	0	6	4	6	3	9	33

Source: Compiled by Statistics Section NRA from Daily Price Reports of Steel Founders' Society of America

Summarizing the above table, nine companies operated two foundries each, two companies operated three foundries, one company operated four and one company operated five foundries.

The largest steel casting companies, based on monthly rated capacity, are shown in the section following.

3. Description of Important Companies.

Table V shows the more important companies of the Steel Casting Industry. These companies operate about forty of the foundries or about 20 per cent of the total number in the industry and represent over 60 per cent of the total capacity.

TABLE V

PRINCIPAL COMPANIES BY SIZE AND MONTHLY CAPACITY, 1934

Foundry No.	Name of Company	Monthly Capacity, Tons	Per Cent of Total Capacity
402) 503) 602) 702) 703)	American Steel Foundries Co.	18,717	17.0
626) 627)	National Malleable and Steel Castings Company	7,000	6.3
506)	Buckeye Steel Castings Company	6,843	6.2
204)	The Bould Coupler Company	5,745	5.2
712)	Scullin Steel Company	5,500	5.0
605)	Bettendorf Company	4,920	4.4
)) 407) 424) 619)	Continental Roll and Steel Foundry Company Duquesne Steel Foundry Company Wheeling Mold and Foundry Company Hubbard Steel Foundry Company	3,678	3.3
113) 706)	General Steel Castings Company	2,843	2.6
517) 518)	Ohio Steel Foundry Company	2,468	2.2
207)	Pratt and Letchworth	2,128	1.9
614)	The Falk Corporation	1,911	1.7
416) 417)	Pittsburgh Steel Foundry Corp.	1,800	1.6
805) 806)	Columbia Steel Company	1,550	1.4

TABLE V

PRINCIPAL COMPANIES BY SIZES AND MONTHLY CAPACITY, 1934
(Continued)

Foundry No.	Name of Company	Monthly Capacity, Tons	Per Cent of Total Capacity
105	Birdsboro Steel Foundry and Machinery Company	1,544	1.4
519	Otis Steel Company	1,420	1.3
412	McConway and Torley Corporation	1,331	1.2
616	Harrison Steel Castings Co.	1,224	1.1
633) 634)	Sivyer Steel Castings Co.	1,188	1.1
505	Bonney-Floyd Company	1,140	1.0
420	Sterling Steel Foundry Company	1,030	0.9
203	Erie Forge Company	1,028	0.9
422	Union Steel Castings Company	960	0.9
515	Machined Steel Casting Company	953	0.9
423	United Engineering and Foundry Co.	900	0.8
611	Detroit Steel Castings Company	875	0.8
122	Penn Steel Castings Corporation	679	0.6
418	Pressed Steel Car Company	654	0.6
	All other companies	30,309	27.7

Source: Steel Founders' Society of America, letter dated August 17, 1934.

4. Financial Conditions of Industry

Table VI below shows a summary of combined earnings for the years 1924 to 1928, for a selected group of representative foundries. The number of companies reporting each year is noted. Earnings are shown both as percentage of assets and as percentage of sales.

TABLE VI

EARNINGS AND CAPITAL TURNOVER FOR SELECT GROUP OF COMPANIES, 1924-1928

	1924	1925	1926	1927	1928	Average for the 5 Years
Earnings Per Cent of Assets	3.80	4.50	6.70	3.40	5.70	4.80
Earnings Per Cent of Sales	4.80	5.30	7.30	4.30	7.20	5.80
Capital Turnover	.79	.86	.92	.80	.79	.83
Number of Companies Reporting	38	39	40	41	42	40

Source: The Steel Castings Industry, by G. P. Rogers, 1930.

The figures for capital turnover given above were computed by dividing earnings as a percentage of assets by earnings as a percentage of sales.

The best earnings of the group for this period, it will be seen, were shown in 1926.

5. Failures in the Industry.

Statistics on failures in the Industry are not readily available. The Steel Founders' Society stated that in the last eight years there were approximately sixty failures, forty-eight from 1927 to 1931 and twelve from 1932 to date. (*).

6. Relationship of Earnings, Prices and Volume.

A report prepared by the Consumers' Advisory Board contains the following statement:

"The selling price (of steel castings) today (Sept., 1933) is about $134 per net ton, on the basis of which the industry is losing about $48.50 per ton, compared with a selling price of $164 a ton in 1929, when net earnings were about $25.60 per ton. In 1929 the net

---

(*) Interview with F. J. Collins, Steel Founders' Society, Nov., 1935.

tonnage was 1,671,952 tons, the margin of profit of about $40,000,000. In 1932, present comparable figures being somewhat higher, production was only 191,888 net tons, on which there was a loss of some $9,500,000." (*)

7. Raw Material Prices.

The raw materials used by this industry are primarily pig iron and scrap steel. Preliminary studies, conducted by the Division of Research and Planning, reveal a considerable degree of flexibility in the prices of both of these items. The price of scrap, expecially, is very sensitive to changes in the market.

The price of steel castings does not reveal the same degree of flexibility as does that of its raw materials.

8. Classes of Products.

Approximately one-half of the steel castings produced are so-called "miscellaneous" castings and the other half are "specialties. The miscellaneous group includes those castings which are usually made to order, according to specifications, designs, and patterns furnished by the buyer; and are usually sold in the rough.

The group called "specialties" includes castings which are primarily designed and engineered by the companies producing them, quite frequently produced from patterns or other equipment belonging to the producer, and sold in semi-finished or finished form. The "specialties" are chiefly railway equipment products such as side arms, draft arms, bolsters, couplers, cast steel car wheels, etc. and automobile products. The patents on "specialties" are controlled by a "pool" of the largest producers of this class of products.

Of the total rated monthly capacity of 109,733 net tons shown in Table II above, 57,968 net tons represent the capacity of 20 foundries engaged in the production of so-called "railroad specialties." (**) The very largest foundries are found in this group.

There is a tendency for companies to specialize in the manufacture of one or two major classes of products. For example, the American Steel Foundries Company produces primarily railroad equipment, such as parts for cars and locomotives. The various foundries of the Continental Roll and Steel Foundry Company are the largest producers of rolling mill rolls. These and other major companies were leaders in establishing price levels during the Code.

9. Methods of Manufacture.

Manufacturing methods in this industry are based on skill and

(*) Consumers' Advisory Board Report by L. B. Lovell-Sept. 7, 1933.

(**) Source: Letter to the National Industry Recovery Board, dated January 8, 1935 from Steel Founders' Society of America.

secret processes. The craft is mastered only after extensive experience and painstaking research. From the selection and treatment of molding sand and the melting of raw materials, to the flogging and cleaning of the finished product, dexterity and a positive knowledge of proper methods learned from experience are essential in the production of these castings.

Four principal melting processes are used--open hearth (basic and acid), electric, converter and crucible. The last two are decreasing in importance while the electric process is growing in favor and the open hearth process is maintaining its place. Practically all "specialties" castings are produced from steel made in electric furnaces. These castings are usually small and cost more to produce per pound that the "miscellaneous" castings, which are larger and made of open hearth steel. Most up to date foundries use heat treating processes in annealing furnaces to develop desired properties in the castings. The production of alloy steel castings has recently become of increasing importance. In manufacturing alloy steel, various chemical elements are added to the ordinary melt. In pricing these castings, the cost of the additions in making alloy steel are added to the regular carbon steel price as "alloy extras."

A brief review of the processes involved in the production of a typical casting is presented below:

A foundry receives an order for a casting, together with the design and specifications. These are examined and, if satisfactory, blueprints are prepared and sent to the pattern shop, where wooden pattern of the proposed casting is made. The pattern is then sent to the mold shop. For the ordinary uniform patterns, halves of the patterns are each laid in steel flasks or boxes. These flasks are considerably larger than the pattern. Specially treated sand is then packed in the flask at the sides and under the wooden pattern . When the sand completely fills all the volume of the flask not taken up by the pattern, the pattern is removed. The two half-molds in the flasks are then clamped tightly together. The complete mold is now heated and the sand hardened. When this mold is ready, the steel is poured and set aside to cool. When ready, the flasks containing the sand moldings are removed, exposing the rough casting.

10. Markets for Industry Products

Steel castings are utilized in the manufacture of the following products, listed in their relative order of importance in 1929:

1. Steam railroads, including electric locomotives
2. Rolling mills, including some steel rolls
3. Buckets, shovels, dredges
4. Tractors, trailers, and industrial cars
5. Cranes, hoists and derricks
6. Refinery and oil well equipment
7. Valves and fittings
8. Automotive castings
9. Electrical machinery
10. Road-making machinery

11. Presses (hydraulic and power)
12. Machine tools
13. Agricultural Machinery
14. Engines, pumps, and compressors

Source: Special Survey of Distribution of Steel Castings Sales for the year 1929 by the Steel Founders' Society of America.

Railroads, the largest consumers, which normally utilize about 50 percent of the industry's output, consumed only 5 to 10 percent of the total output during the depression. This furnishes a partial explanation of the drastic reduction in sales during that period. (See Chart I & Exhibit I, Table I-A)

11. Competitive Products.

Steel castings are in competition with gray iron and malleable iron products, as well as welded steel, forgings, die castings, stampings and non-ferrous products. Very little statistical data showing prices and production are available on these products with the exception of Malleable Iron Castings. (See Exhibit I, Table IV and Chart II.)

II. TRADE ASSOCIATION ORGANIZATION AND ACTIVITY

A. The Steel Founders' Society of America

1. Membership

The only organization of any importance within the industry is the Steel Founders' Society of America, established in 1902. The membership of association includes all of the large and many of the smaller units of the industry.

In 1930, the membership of the Society represented about 20 percent of the total number of foundries and approximately 30-40 percent of the output of the industry. (*)

The Society has, for many years, been actively engaged in the collection and distribution of statistical material covering a wide range of subjects.

When the N.I.R.A. was passed, the Board of Directors of this body immediately assumed the responsibility of preparing and presenting a code. The first application for a code, dated August 25, 1933, indicates that at that time the membership of the association comprised about 65 percent of the total number of steel foundries. The sales of Society members for the year 1933 amounted to 78 percent of the total for the industry. (**) According to a letter from the Steel

(*) Federal Trade Commission-Open Price Trade Association, 1929, p. 387

(**) Research and Planning Division Report--Steel Castings Industry August, 1933.

PRODUCTION OF STEEL CASTINGS

1926-1935

CHART I

SOURCE: "SURVEY OF CURRENT BUSINESS"

NRA
DIVISION OF REVIEW
STATISTICS SECTION
NO. 506

826
584

MALLEABLE IRON CASTINGS, BY MONTHS, 1926-1935

PRODUCTION AND AVERAGE PRICE PER TON, F.O.B.

9826

CHART II

585

SOURCES: "SURVEY OF CURRENT BUSINESS", FOREIGN AND DOMESTIC COMMERCE;
"WHOLESALE PRICES", BUREAU OF LABOR STATISTICS

N.R.A.
DIVISION OF REVIEW
STATISTICS SECTION
NO. 505

Founders' Society, dated August 17, 1934, membership on that date represented 85 per cent of the industry in number and 93 per cent in capacity.

2. Organization

The following is a description of the organization of the Society in 1930. (*) It is believed that the organization today is the same, with the exception that there are now eight geographical divisions whereas there were only five in 1930. (See Chart III)

"The general membership is vested with authority, through its voting power, to regulate broadly all general policies and projects undertaken by the Society. Theirs is the right to vote changes in the By-laws, to select the members of the Board of Directors and pass upon all major matters facing the organization.

"The Board of Directors are chosen by the members to represent them. Each geographical Division of the Society is equally represented on the Board, thus making that body thoroughly representative. To them are referred specific questions of policy and direction for more expeditious handling. Their duties are quite similar to those of Boards of Directors in commercial corporations.

"The President of the S.F.S.A. is chairman of the Board of Directors, and presides at all Board meetings as well as at convention meetings.

"Ranking next to the President are eight Vice-Presidents, each representing a geographical division of the Society, who are not only members of the Board of Directors but also Chairmen of their respective divisions. They preside at all general meetings held in their territory or division. These geographical divisions, among other things, are set up to better enable the Society to deal with local problems as well as to maintain equitable representation of the membership on the Board.

"Under the Board of Directors and responsible to them is the Managing Director, into whose hands the active work of the Society is entrusted. His duties comprise the general conduct and administration of the affairs of the S.F.S.A., management of its office and operating staff, handling of finances, etc.

"All working committees are appointed and approved yearly by the Board of Directors, and work with the Managing Director, who is a member ex-officio of all working committees. Reports of committees may be made in any of four different ways, depending upon the most practical disposition of the problem in hand;-

First: Directly to the Board of Directors,

Second: Directly to the Membership,

(*) The Steel Castings Industry, G. F. Rogers, 1930.

Third: To the Managing Director, who in turn includes the report with his own recommendations delivered to the membership or to the Board, or

Fourth: To the Managing Director for his specific guidance in handling a particular problem.

-- -- -- -- -- -- -- -- --

"If a situation or matter arose not classified under the specific subjects assigned to each working committee, or if in the judgment of the Board of Directors the matter in question could best be handled by a special committee, provision is made, and the Board empowered to appoint such special committee.

"It is planned that the personnel of working committees will not, as a rule, exceed three members, thus permitting of speedy transaction of business either by mail or through committee meetings. In many instances these committees function largely in an advisory capacity to the Board of Directors, the Society and the Managing Director while the detail work is handled by the executive office of the Society.

WORKING COMMITTEES AND MATTERS COMING UNDER THEIR JURISDICTION

(Each composed of three members, unless otherwise specified, and all appointed by Board of Directors yearly)

Cost Committee:

Matters pertaining to Uniform Cost System, Comparative Cost Studies and Reports, and selling of sound cost methods to the industry.

Finance Committee:

Examination of Society's books, and matters pertaining to income, expends, budgets and audit.

Membership Committee:

Direction of membership building, passing on eligibility and proper classification of applicants and approval of firms seeking membership, subject to final approval of Board of Directors.

Arbitration and Vigilance Committee:

Disputes and questions involving business ethics, fair trade practices, etc., conciliation and promotion of friendly relations which cannot be successfuly handled by the Managing Director.

Co-Operation and Legislation Committee:

Contacts with government departments, tariff, proposed legislation, contacts with other trade organizations and associated industry contacts.

Industrial Research Committee:

Matters relating to advancement of manufacturing practice; trade customs, standardization, simplification, elimination of wastes, apprentice training, all kinds of insurance, labor and employment, traffic problems and purchasing information, etc.

Technical Research Committee:

Development of new uses for cast steels and standard specifications, Conduct of tests and investigations, Chemical and physical research to improve foundry practice product. Compilation of technical manual, etc.

Statistical Committee:

Problems relating to collection of data and figures regarding the industry, production, bookings, capacity, earnings, shipments, etc., market and industry surveys and production of steel foundry directory.

Entertainment Committee:

Matters pertaining to the social phases of conventions and meetings. Speakers, programs, recreation, golf, accommodations, banquets, entertainment of guests, etc. The promotion of friendly acquaintance among members.

Merchandising Committee:

Problems regarding advertising, publicity better selling methods, market development, Society exhibitions and production of Society merchandising publications, etc.

Administration - General Office:

Handles administration and operation of all Society work and projects: carries out all plans and undertakings, after approval by the Board of Directors; does all detail work incident to meetings and conventions; compiles and distributes reports; publishes Society Bulletin; special bulletin letters of information for members; releases publicity; conducts material exchange, traffic department and employment bureau, assists in the work of all committees and deals with all special projects.

"The entire framework of organization constitutes a simple effective structure adapted to the successful prosecution of the recommended Program for the Society." (*)

3. Pricing Practices Prior to the Code.

a. Introduction.

The ability of the Steel Founders' Society to introduce an elaborate system of price filing differentials and schedules, within so short a time after the approval of the Code, reflects its previous experience in this field. The Federal Trade Commission in its publication (**) "Open Price Trade Associations" describes some of the experiences with pricing practices attempted by the Society.

b. Early Forms of Price Listings and Practices, 1912-1927

As early as 1912, a system was inaugurated under which members submitted reports covering all phases of their business to the central office of the Eddy Association--as it was known then. This association distributed these reports to all members. The scheme was abandoned shortly thereafter.

Several years later, " a plan was adopted whereby there would be no exchange of any price data until after all business or any inquiry, had been closed and the contract let. " From reports released by the Society, the members were kept informed of the trend of the market and all closed transactions. This plan was not followed to any great extent and was considered of little value. At a meeting held on May 2, 1934 it was decided to discontinue this practice.

During October, 1923 the Society, for a time, attempted a system of reporting "intentions to quote and orders taken." Each bidder would report to the secretary that bids were being submitted. If one of the bidders was awarded the contract, he furnished the prices and terms to the secretary who in turn released this information to the other member bidders. In July, 1924 these reports were discontinued. They were renewed on June 19, 1925, and again discontinued on December 10, 1926, on the ground that no benefits were derived from this practice and because very few operators were cooperating.

Another form of price reporting was adopted pursuant to a resolution adopted by the Society on March 23, 1923. The secretary was asked "to have printed and sent out to the members a book of 'notification levels' based on the last published prices of the American Steel Founders." In May, 1923, members were urged to report regularly on quotations and orders taken. Apparently this request was made to show that members were not using the "notification levels" as the price to be quoted. The term "notification levels" appears to have represented a compilation of the

---

(*) Ibid. page 47-49.

(**) Federal Trade Commission--Open-Price Trade Associations February 11, 1929. pp. 387-388.

last published prices, similar to the Quarterly Reports released by the Society during the Code period. However, even this type of price reporting was short-lived. In April, 1924 "price level notification" was abandoned because of the opin of most operators that it was of little value.

It is apparent that all efforts towards securing the filing or distribution of price data, (advance prices or even back prices on closed business), met with little or no response from foundry operators and had to be discontinued. As late as April 20, 1926, Mr. McKercher, counsel for the Society, expressed the opinion that, under the law, "no collection or distribution of data on advance prices or quotations on jobs are permitted."(*)

Not until the early part of 1927 was any success achieved in this direction. At a meeting held on January 21 of that year a member inquired as to the legality of reporting to the Society, for investigation, the names of foundries selling castings below the cost of production. Mr. McKercher stated that, in his opinion, such investigation could be made on closed business only. He went on further to say that "when members learn of price situations that can be fairly and generally discussed, they are privileged to bring up the point at these meetings." He recommended further, however, that "nothing be done by way of agreement to bring such competition to a normal level." (**)

Members were becoming more and more interested in price and its varying phases. From this point on the discussion of the price level, the listing of prices, and other phases of the price problem found a more receptive attitude on the part of the members than had prevailed before.

C. Trade Association Activity -- 1929-1933

In 1929, the Steel Founders' Society conducted a survey of pricing methods in the Steel Castings Industry. (***)

It was found that 42 percent of all concerns included in the survey quoted principally on schedule; 42 percent principally on pound, or weight basis, and 16 percent on a piece or unit basis.

In the early days of the Industry it was customary for foundries to sell their products at a flat price per pound. As a rule this covered anything the customer required, regardless of pattern, size or character.

Subsequently, contracts were made at one price per pound for castings above a certain weight with a higher pound price below that weight. Still later weight schedules were developed in crude form. Concerning these schedules, Mr. G. P. Rogers, in the 1929 report, is quoted as follows:

"....In later years they have been refined and brought up-to-date, so that in some few instances they may be considered fairly practicable.

"However, flat prices or weight prices as well as schedules are still used, and there is no standard practice. All will admit

(*) Ibid
(**) Ibid
(***) G. P. Rogers, The Steel Castings Industry--1929-pp. 123-124.

some improvement in methods of quoting prices, but we are a long way form an intelligent and sound solution.

"Schedules may be an improvement on the old flat rate method, but it is far from a scientific way of selling a product.

"It does not follow that the costs of production on castings of the same weight are identical. One may be compact, using simple cores or none at all, easy to mold and clean, with little hazard as to loss, and producing large tonnage per foot of foundry space. Another of the same weight may be long, with thin sections, taking large flasks, requiring the setting of intricate cores, having a percentage of loss and producing a small tonnage per foot of foundry space.

"There cannot possibly be the same cost of manufacture, and there can be no justification as sound business practice for selling these castings at the same price or by a schedule of prices.

"The only reasons I can see for present methods of pricing is because of custom, habit and lack of initiative to develop and adopt sounder methods. Yet all around us we find industry after industry, from the farmer to the industrialist, whose methods of pricing their products have entirely changed from those prevailing only a few years ago.

"This subject is not new, but it is, in my judgment, important, and it is not receiving from the industry the consideration or attention it deserves.

"It is folly to wait for the purchaser of castings, or unforeseen conditions, to automatically adjust this situation. It should be studied carefully by the industry itself, and the solution found, followed by the pioneering courage to put it into operation.

"In my judgment it has been no small factor in materially contributing more to the price and profit troubles of the average steel foundry than any other one thing, unless the producer had little or no method of cost finding.

"No lighting equipment manufacturer would think of selling his metal fixtures at the same price based on weight. You do not buy furniture on the basis of the number of feet of lumber used in its construction.

"I am willing to go on record against the soundness of the present method of quoting prices on steel castings, and to predict that with thorough study this condition can be improved, and once new methods are observed will be more satisfactory to the foundry interests and the industries they serve than present-day practice. In addition, this will contribute much toward the elimination of factors that are now most disturbing.

"The production of castings is an art, not a standardized manufacturing process, and with the growing tendency toward alloy steel, plus rapid strides in production methods and improved products, as well as new uses, it is going to become an industry based more and more on craftmanship and technical knowledge. Consequently now is a most opportune time for effective consideration of this problem." (*)

A "check" study of the Industry's original Pricing Survey was conducted by a private firm of engineers during 1933. The following quotation is an extract from this check report:

> "The Engineer requested copies of all schedules in effect in 1926, these schedule usually being for individual customers although in many cases several customers operated on copies of the same schedules...."
>
> "In a few cases the companies were not selling on schedules in 1926, therefore general data were obtained regarding the various classes of castings which they were making...."
>
> "During the examination of the 1926 selling prices..., the Engineers found that in many cases the schedules, were the same as those which were in effect in 1925, 1924 and in some instances, even in 1923...." (**)

Apparently, during the period preceding approval of the code, a more or less uniform nominal price level was maintained. Price competition took the form of indirect concessions through changes in terms and conditions of sale rather than by changes in the existing schedules.

The schedules in use prior to the Code did not, in general provide for quantity differentials. Quoting further from the Engineer's report: (***)

> "In some cases the company would allow a general reduction of 5 to 15 percent for quantity. In other cases special prices were given if the purchaser insisted upon it, or if the company felt inclined to do so. The practice of reducing the selling price per pound on the basis of the number of castings per order was not uniform...."

(*) G. P. Rogers - The Steel Castings Industry - 1929 pp. 123-124
(**) Ford, Bacon and Davis Co. - Engineers-Report, Selling Price Schedules for Miscellaneous Steel Castings-Dec. 29, 1933 - p.11
(***)Ibid, p. 16

Prior to the Code, although small companies may, to a limited degree, have followed the price schedules of their larger competitors, it is probable that they frequently offered substantial discounts from list prices as inducements to purchase. The Code Authority described pre-code prices as the

> "....result of 'sweated' labor conditions, chiseling and cut-throat competition; that when the Industry was operating at only 10 percent of capacity, as it did during the great part of 1932 and 1933, the foundries were forced to give their castings away, if necessary, simply to cover as much of their overhead as possible....
>
> "For example, some foundries that specialized in medium weight and very heavy castings used to attach a nuisance value to small orders for very light castings.
>
> "Often they would accept a blanket order consisting almost entirely of heavier type castings but including a few lighter ones. In such cases an 8-cent or 9-cent price on the heavier castings might be consistent with costs, but, frequently, the lighter ones were thrown in at the same price regardless of whether or not such price represented a loss. The object was to offset such losses with profits realized from the sale of the heavier castings. The lighter castings were thus frequently sold at considerably less than cost as 'Loss Leaders' to obtain orders on the heavier castings." (*)

The following quotation from the 1929 Industry Report indicates that the Society was anticipating the possibility of establishing standard systems of pricing for the Industry's products:

> "Consequently now is a most opportune time for effective consideration of this problem.
>
> "It is my recommendation that this matter be referred to the Industrial Research Committee for study in cooperation with the Society, and that a definite plan be evolved for the establishment of piece prices, and that the question not only be taken up aggressively with the foundries themselves, but that regular and constant publicity be given the matter, to educate both the producer and the consumer to a piece price basis wherever practical...

(*) Letter from Code Authority to members of Industry, November 20, 1934--pages 5 and 6.

"Then, if schedules must prevail, let them be based on quantity purchases, not on weight or tonnage."(*)

However, little, if anything, was done in this direction during the depression. Lack of standardization of products would have made any action to stabilize prices an almost hopeless task. The classification of products accomplished under the Code was really the back-bone of the entire open-price plan in this Industry.

(*) G. P. Rogers--The Steel Castings Industry--1929, pp. 124-125.

CHAPTER II

FORMULATION OF THE CODE PROVISIONS

I. PROPOSALS FOR PRICE FILING UNDER THE CODE

A. Industry Program for Price Filing as Submitted

The first draft of the Code of which there is record is dated August 9, 1933. Article VII - "General Provisions" - is quoted below:

Section 1:

Subject to the approval of Board of Directors, industry members may group themselves for administrative purposes into various subdivisions or product classifications and each subdivision may appoint its supervisory and/or administrative agency.

Section 2:

Subject to the approval of Board of Directors, right is reserved to Code subscribers to nominate representatives who may meet to determine merchandising policies.

Section 3:

Increases in productive capacity prohibited, except by approval of 3/4 vote of the Board of Directors.

An amended version was submitted on August 23, 1933. No changes were made in Section 1 and 3, but Section 2 was altered to provide for price filing in the following manner:

(a) Power was vested in the supervisory or administrative agency to institute price filing at its discretion.

(b) A ten-day period was stipulated during which members were required to file after such action was taken.

(c) Price lists were to be individually prepared.

(d) Price lists were to be disseminated to other producers of the same product.

(e) Price changes could be filed subject to a minimum waiting period of ten days, unless the agency should authorize a shorter period.

(f) Competitors were permitted to meet the effective date of the first filed price change.

(g) Sales below filed prices might be prohibited at the discretion of the supervisory agency. (The agency exercised its power by prohibiting sales below filed prices.)

When this original draft Code was submitted, no specific statements were made by the proponents indicating the need of a price filing provision, the intended functions of such a plan, or the objectives to be achieved.

B. Opposition to the Proposed Provisions.

The only industry protest regarding the price filing provisions of the Code received prior to approval was contained in a letter from the Thew Shovel Company, Lorain, Ohio, dated August 29, 1933. It is quoted below:

> "The Steel Foundrymen's Association of America we understand are presenting at Washington a code covering the general scope of their industry, and in it is a basic price list covering steel castings purchased in respect to cost for various industries.
>
> "In the new price set-up are provisions for the Crane and Shovel manufacturers specifically outlining the base price of castings sold to that industry. That portion of the code is most objectionable and dangerous if our interpretation of it is correct. This portion would force all foundries to sell castings on a per pound basis and at a schedule of prices classed according to the weight of castings. They then intent to classify customers according to industry and for each industry they will allow a blanket discount from the basic schedule. A quantity discount is proposed of appreciable size, but only applicable for quantities ordered at one time and for specified delivery.
>
> "As we understand the code, the proposed method would place a decided penalty on simplicity of design and will not give the consumer the benefit of his engineering talent and experience in designing a simpler casting for foundry production over a casting of corresponding weight that may be more intricate in design and much more costly to produce.
>
> "Many consumers of steel castings have recognized the justice and advantage of purchasing castings on a piece price. It has simplified the work, has resulted in no hardship to the foundry, and reduces the possibility of being placed at the mercy of the unscrupulous foundries who are inclined to add as much weight to the casting as possible when they are purchased on a pound price. We consider it patently unfair to classify castings as just castings. Each one is a separate piece of finished product varying from all other castings of the same weight in molding, core labor, flask requirements, etc." 1/

1/ Letter to Administration from Thew Shovel Co., Lorain, Ohio--August 29, 1933--Code Records Files.

Due to the fact that Administration policy in regard to price filing had not crystallized at the time this Code was being negotiated, there is a lack of Administration comment regarding many points which would have been subject to criticism later. The Research and Planning Division and Consumers' Advisory Board did, however, submit certain objections.

Under date of October 11, 1933, the Research and Planning Division submitted a report questioning the advisability of a ten-day waiting period for revised prices, contending that price changes should go into effect immediately after notice by telegram. (*)

Under date of September 9, 1933, (two days after the public hearing), the Consumers' Advisory Board reported that it did not object strenously to the open price provisions, although it believed that they might constitute the first basic step toward price-fixing. The Board suggested that a provision making mandatory the mailing of price schedules to all buyers who so requested be included in order to "make the open price schedules truly open to buyers as well as to sellers." (**)

II. THE PRICE-FILING PLAN AS APPROVED AND AMENDED.

A. Analysis of the Open-Price Provision as Approved

The Code was finally approved on November 2, 1933. Section 1 and 2 of Art. VII were substantially in the form contained in the August 23,(***) version. Section 3 had been deleted at the request of NRA. Section 2 provided that the price filing system could be inaugurated for any subdivision, at any time, at the discretion of the agency affected. There was no provision for Administrative approval nor for suspending or abandoning the plan.

General and subdivisional administrative agencies were provided for as follows:

> "The Board of Directors of the Society shall be the general agency for the administration of this Code....." (****)

(*) Research and Planning Division - October 11, 1933 - Files, Division of Review.

(**) Consumers' Advisory Board Report - September 9, 1933 - Code Records Files

(***) See p. 595 supra.

(****) Code, Art. V, Sect. 1, page 304

"Members of the Industry having a common interest and common problems may group themselves for administrative purposes in various subdivisions or product classifications, subject to the approval of the Board of Directors. The majority of members in each subdivision or product classification may appoint its agency with supervisory and/or administrative powers, subject to the Board of Directors. In the event that no such agency is so appointed, then the Board of Directors may appoint such agency." (*)

No such subdivisional agencies were ever set up. The Board of Directors was the agency which actually administrated the price filing provisions. The only duty definitely assigned to it under these provisions was the immediate distribution of each price list filed by any member to all other members engaged in the manufacture of "such specific product." In actual practice the Code Authority went much further and established an elaborate system of differentials, and rules and regulations to govern the price filing activities of the members of the industry.

There was no provision in the Code requiring administrative approval of the rules specifically related to price filing; Section 4 of Article V however states:

"Any action taken by the Board of Directors or other group within the Industry, for the purpose of making effective the provisions of this Code, may be submitted to the Administrator for approval, and shall in any case be subject to the disapproval of the Administrator."

The Code contained no provision specifying the types of products for which prices were to be filed, nor did it require administrative approval of the selection of products to be subject to price filing.. The only products which were actually subjected to price filing requirements were miscellaneous castings, covered by an elaborate system of classifications and schedules.

The Code contains the following provision as to filing of price changes:

"Revised price lists may be filed from time to time thereafter with the agency by any such member of the Industry to become effective on the date specified thereon....." (**)

This paragraph was so worded that it might have been interpreted as requiring that an entire new price list be filed in the event of a change in price on any individual item; however, this interpretation was never used in actual practice. Changes in individual price elements were filed regularly by members of the Industry.

(*) Code, Art. VII, Sect. 1, page 307

(**) Code--Art. VII, Sect. 2, Page 307

Price changes did not become effective until ten days after the filing date, unless the agency authorized a shorter period, and a provision was included in the Code permitting competitors to file prices meeting a change on the same effective date.

There was no requirement that file prices should continue in effect for any stated period before being superseded by new filed prices.

The Code empowered the agency to decide whether products could be sold at less than filed prices.

All of the rules and regulations published by the Code Authority were submitted for approval, but prior to the issuance of Office Memorandum No. 336 (*) no formal action was taken by the administration.

There was no requirement for the dissemination of price information to customers, nor for the dissemination of prices by members themselves.

The agency was required to distribute information "immediately", which was construed by the Code Authority to mean "by mail."

There were no regional filing limitations, although prices were filed by regional groups of foundries.

The price data were made available to members through a series of daily and quarterly reports. These quarterly reports furnished minimum or prevailing prices filed and in most cases the key numbers and the price schedules of the foundries which filed prices other than those generally prevailing. Sellers were clearly identified in the code authority's reports by a list previously distributed to all the members of the Industry.

All prices were, by custom and by ruling of the Code Authority, on a "delivered" basis, that is, F.O.B. foundry with freight allowed to destination.

There was no restriction on the destruction of price records. No substitute for filing with the central agency was provided.

B. Amendments Affecting Price Filing Provisions.

Early in 1934 The Code Authority submitted several amendments to the Code designed to reduce the possibility of evasion through the offer of indirect concessions. Not all of these were approved.

Under date of March 14, 1934, the Code Authority forwarded a letter from which the following paragraphs are quoted:

(*) Determination Respecting Acts of Code Authorities and Their Agencies Which are Subject to Disapproval by N.R.A.--February 13, 1935.

"It is the intention of the Code Authority of the Steel Castings Industry shortly to petition the Administration to make several amendments to our Code. Amongst other will be one having to do with terms of payments.

"In substitution of Section 7 of Schedule D of our Code, it is proposed to substitute a Section as follows:

'Allow terms of payment more favorable to the customer than the standard terms established from time to time by the agency exercising supervisory and administrative powers over the Miscellaneous Castings subdivision of the Industry, pursuant to Article VII of the Code.'

"The purpose of this letter is to inquire whether, in your opinion, such a general clause delegating general powers to the Code Authority would be approved. If not, we shall then draft another clause along the lines of the terms of payment of the Iron & Steel Code, being specific in its terms. It would be desirable, however, to have the general authority outlined above, if possible." (*)

This proposed amendment was submitted to the various advisory boards and the Code Authority was advised as follows:

"Replying to your letter of March 14 regarding the proposed amendment to Section of Schedule D of your Code, I submitted this to our Legal Division which has replied as follows:

'Replying to your memorandum of the 15th instant regarding the above, I do not approve of the suggested amendment. It is in effect delegating to the administrative Agency certain legislative powers that even the Code Authority does not possess. It is couched in such language that discriminatory terms or even arbitrary classification might be established.

'In replying to this communication I would respectfully caution you not to commit yourself in advance to an approval of any proposed amendment similar to the one in the Iron and Steel Code which the Society mentioned in its letter.'"

The Code Authority in a letter dated April 5, 1934, submitted a comprehensive list of twelve proposed amendments and requested that a hearing be scheduled for their consideration.

The first proposal amendment provided for the investigation of prices by the supervisory agency. This amendment was never approved and was apparently abandoned by the Code Authority.

(*) Letter to N.R.A. from Steel Founders' Society - March 14, 1934.

The next amendment submitted constituted a revision of the one earlier proposal for deleting Sections 6 and 7 of Schedule D and substituting new sections. This amendment imposed mandatory uniform cash discounts on all members of the industry, a small discount being allowed for payment on long distance shipments, within twenty-five days from date of invoice, and for payment within ten days on all other shipments.

A representative of the Consumers' Advisory Board who attended a conference on the amendments proposed in the Code Authority letter of April 5, 1934 made the following comment regarding this proposal:

> "It would also seem more equitable to have the credit terms applicable to shipments from East to West be made reversible so as to apply also from West to East."

Under date of June 21, 1934 the Consumers' Advisory Board commented on this amendment as follows:

> "We recommend the deletion of Section 7 which attempts to set up uniform terms, not only because we believe that it unduly interferes with an individual member of the industry in his right to elect his own terms, but such enforced uniformity has assisted, and will assist, an industry in accomplishing price fixing." (*)

The Code Authority, in a letter of May 8, 1934, accepted the first modification suggested by the Consumers Advisory Board by making the credit terms applicable to shipments from West to East.

A further modification of the proposal was made by the Code Authority in a letter dated May 14, 1934, to include all shipments from any plants in the United States, Alaska, the Canal Zone or any of the insular possessions of the United States.

This proposal remained unchanged until the Public Hearing, held on June 14, 1934 at which, at the request of the Code Authority, the last provision was changed to read as follows:

> "....; provided, however, in the latter cases, that any member of the Industry may allow such discount of one-half of one percent (½%) for payment within 10 days on the basis of settlements twice in each month as follows:
>
> "'(a) On invoices dated from the 1st to the 15th, inclusive, of any month, such discount may be allowed on payment of such invoices on or before the 25th of such month;
>
> "'(b) On invoices dated from the 16th to the end of any month, such discount may be allowed on payment of such invoices on or before the 10th of the next following month.'"

(*) Consumers' Advisory Board Memorandum - June 21, 1934 -- Code Records Files.

Prior to approval, this proposed amendment was further modified. A provision was added which prohibited the dating of a sales invoice later than date of mailing of such invoice, or later than the third day following date of shipment, and which lengthened the cash discount period for long distance shipments from 25 to 30 days from date of invoice. Sales to the United States Government Departments were exempted, with the proviso that terms of payment to the Government were not to be more favorable than those prescribed by the Government pursuant to law. The amendment as revised was approved on August 11, 1934. (*)

A similar provision, specifying maximum cash discounts for manganese steel castings, is contained in Section 12 of Schedule G. This was approved as Amendment III on October 2, 1934. (**)

The next amendment proposed by the Code Authority in its letter of April 4, 1934 was the addition of the following new Section to be added to Schedule D.

> "Sec. 8: It shall be an unfair practice to: Quote prices for Steel Castings for railroad and railroad equipment repair or maintenance purposes more favorable to the purchaser than f.o.b. freight basing point, seller's foundry, with the freight charges allowed to the nearest point on the line of the railroad purchasing the castings; provided, however, that for castings for new locomotive or car equipment to be built in the railroad's own shop or in a commercial locomotive and/or car-building plant, prices may be quoted f.o.b. freight basing point, seller's foundry, with freight allowed to destination; and provided further that new equipment shall be defined in accordance with American Railway Association Rules."

This proposal was modified by the Code Authority's letters of May 8, 14, and 31, 1934. This matter was referred back to the Code Authority with the request that a ballot be taken among the members of the industry, in order that an exact appraisal might be made of their attitude on this question. Such a ballot was sent out and a majority of the members of the industry indicated their approval of the proposal. However, final results were not obtained and published until May 11, 1935, so no action could be taken.

The next proposal covered the quoting of prices of castings on a per pound basis, as follows:

(It shall be an unfair practice to-)

> "Sec. 9. Invoice castings at prices not based upon the actual weights thereof or quote or charge lump sum prices or prices per piece or per casting."

(*) Amendment 1, Code of Fair Competition. Vol XV, p. 257

(**) Code of Fair Competition, Vol. XVII, p. 293.

This proposal was modified in the letter of May 8, 1934 to read as follows:

"Sec. 9. Invoice castings at prices not based upon the actual weights thereof; provided, however, that piece prices may be quoted if, after April 1, 1934, a member of the Industry has produced twenty-five castings or more from approved pattern equipment applying thereto and the average weight of such castings are used in computing the minimum piece prices by multiplying the vendor's filed price per pound by the average weight of such castings." 1/

This proposal remained unchanged throughout the negotiations. A public hearing was held on June 14, 1934, at which many protests were submitted. It was claimed that the proposed amendmend would discriminate against the small foundries, and would also prevent bidding on most government work in view of the general requirement for lump sum prices on steel casting bids. The amendment was never approved.

A further amendment was proposed to Schedule E of the Code which dealt with unfair trade practices relative to specialties. It imposed a system of mandatory cash discounts on domestic sales of cast steel wheels, similar to that discussed above in connection with Schedule D. (*) This proposal was approved on August 11, 1934.

The Code Authority letter of May 8, 1934, contained a proposed amendment to Section 3 of Article VII, (the Section prohibiting Sales below Filed Prices), by the insertion after the words "shall sell" of the words "or offer for sale."

This change was designed to prevent a member of the Industry from making a quotation below his filed price and then filing a reduced price ten days before the delivery date of the materials in question.

The following comments were received from the advisory boards and divisions regarding the entire section:

From the Legal Division May 14, 1934:

"The 'waiting period' for filed price lists should conform with whatever may be adopted by the Administration as a new policy on the subject." (**)

From the Division of Research and Planning, May 16, 1934:

"We feel that this provision should be amended to provide that all price lists shall be open to the inspection of all interested parties. We also suggest the deletion of the words 'at least' in the twelfth line."

1/ Letter to N.R.A. - from Steel Founders' Society - May 8, 1934 -- Central Record Files.

(*) Page 599 supra.

(**) Code Records Files.

From the Consumer's Advisory Board, May 21, 1934:

"We recommend that filed prices shall become effective immediately and shall be made available to all interested parties, and that prices shall be filed with a confidential agency, obligated not to identity individual concerns in distributing information."

Under date of August 16, 1934, the Consumers' Advisory Board recommended the revision of the entire open price provision to conform to Office Memorandum 228, because of evidence in their files indicating an almost complete uniformity of prices at higher levels than before.

When these amendments were forwarded for approval the Review Officer made the following comments:

"3. Provisions of Article VII authorize establishment of subdivisional or group agencies within the industry. Such agencies are then empowered to declare operative open price systems for their respective subdivisions, at their option. Power is also given the subdivisional agency to prohibit sales below filed prices if the agency so decides. A 'waiting period' of 10 days is prescribed as an interim between filing date or price schedules and effective date thereof. No provision is made for publicity of price schedules for benefit of buyers as well as sellers.

"This section is manifestly objectionable on several grounds including:

"(a) The vagueness and uncertainty of future conditions which surround the vesting with a subdivisional agency the right to declare in operation an open price system at any time and to institute a prohibition against sales below the price filed, makes the provision undesirable from a general administrative standpoint. Even though no other objection appeared, however, the right of a non-governmental and non-impartial body to declare in existence the prohibition against sales below filed price conflicts with the policy outlined by our Legal Division, with respect to matters involving property rights. Since sales below filed prices may effect rights of property of some members of industry, the prohibition is felt by members of Legal Division to be improper until confirmed by the act of a governmental and impartial body.

"(b) The 'waiting period' provision is vitiative of policy declared by Office Memorandum No. 228 (which, however, is not required to be applied to approved codes).

"(c) Failure to make price lists available to buyers as well as sellers violates conditions set forth in Policy Memorandum of October 25, 1933."

Despite these adverse comments, the proposal was approved in unaltered

form on August 24, 1934.(*)

C. Functional Aspects of Other Code Provisions Integrated With Price Filing Provisions as Adopted.

The code provisions directly integrated with the price filing provision included: Prohibition of absorption of pattern costs, insurance costs or inspection charges, and mandatory uniform cash discounts.

Sections 8, 9, 10, 11, and 12, of Schedule D, which were approved by amendment on August 24, 1934, prohibited the absorption of certain ancillary costs. This was done to prevent members of the Industry from indirectly selling below their filed prices. These provisions follow:

"For all purposes of this Code, it shall be an unfair trade practice for any member.....to do any of the following acts:

"Section 8. Furnish pattern equipment or alterations thereof at less than the actual cost of production; provided, however, that if the patterns are and remain the property of the foundry producing them, it shall not be construed as a violation of this provision for such foundry to absorb the cost of patterns or alterations in quantities of 500 or more pieces from one pattern at one time.

"Section 9. Absorb the cost of any insurance that may be carried to protect customers' patterns against fire and/or the elements.

"Section 10. Accept responsibility, where there is no liability, for consequential, special or contingent damages, or offer to do more than replace castings rejected due to defective workmanship and/or materials.

"Section 11. Absorb any inspection charges incident to inspection by outside individuals or agent performed at the request of the customer.

"Section 12. Quote or communicate to customers, directly of indirectly, a price before the effective date thereof permissible under Article VII of the Code." (**)

Uniform mandatory cash discounts were imposed in the sale of miscellaneous steel castings and cast steel wheels. (**)

In addition to these code provisions, the Code Authority from time to time adopted various rules and regulations. These were of these types: General Resolutions, Labor Resolutions, and Commercial Resolutions. Only the last are of importance as affecting price filing. The more significant of these are described in Exhibit II, below.

(*) Amendment #2, Steel Casting Code, Aug. 24, 1934. Codes of Fair Competition, Vol XV, p. 451.

(**) Amendment 2, to Code of Fair Competition for the Steel Castings Industry - August 24, 1934. Codes of Fair Competition. Vol. XV, p.454

CHAPTER III

ORGANIZATION AND MECHANICS OF OPERATION OF OPEN PRICE PLAN

The preceding chapter has dealt with the adoption and later modification by amendment of the price filing plan, and certain related provisions. In the following pages the methods employed to put the plan into practical operation will be discussed.

I. THE ADMINISTRATIVE ORGANIZATION

The open price plan for this Industry was administered by the Board of Directors of the Steel Founders' Society of America, the trade association which sponsored the code. This was pursuant to the grant of power contained in Article V, Section 1, of the Code which provided that "The Board of Directors of the Society shall be the general agency for the administration of the Code."

The actual administration was conducted by a professional staff consisting of an Executive Vice-President, a Secretary-Treasurer and a group of assistants. The first two positions were held during the Code period by Col. Merrill G. Baker and Mr. R. L. Collier, respectively. Their actions were at all times subject to the approval of the Board of Directors which constituted the Code Authority. This Board originally consisted of the following members:

F. A. Lorens, Jr., Vice-President, General Manager American Steel Foundries, Chicago, Ill.

Clarence Tolan, Jr., President, Dodge Steel Corporation, Philadelphia, Pa.

Keith Williams, Vice-President, Pratt-Letchworth Company, Buffalo, N.Y.

J. W. Glover, President, Glover Machine Works, Marietta, Ga.

D. C. Bakewell, President, Duquesne Steel Foundry Division, Pittsburgh, Pa.

R. L. Brooks, Treasurer, The Sawbrook Steel Casting Co., Cincinnati, Ohio.

J. O. Houze, President, National Malleable Steel Casting Co., Cicero, Ill.

Paul R. Laussler, Vice-President, Omana Steel Works, Omaha, Neb.

J. F. Arnoldy, Secretary, Warman Steel Casting Co., Huntington Park, California.

Each of these members was selected from one of the geographical divisions into which the industry was divided, in accordance with the by-laws of the Society.

There was no delegation of power by the Board of Directors to the executive officers as far as can be deduced from the records available. The trade association, The Steel Founders' Society of America, was, to all intents and purposes, the Code Authority.

Inasmuch as the activities of this Code Authority were financed by the dues paid into the Society by its members, no information is available regarding the proportion of its budget which was employed in operation of the price filing plan. It may be assumed that a considerable proportion of the income of the Society was expended in furtherance of the plan, in view of its elaborate and complicated nature and the importance attached to it by the industry as a whole.

II MECHANICS OF OPEN PRICE OPERATION

A. Classification of Products

The Steel Casting Industry is almost entirely a special order industry. Every item, with a very few minor exceptions, is made and produced in accordance with customers' specifications. There is no manufacture for stock or inventory, nor can predictions anticipating demand be made with any degree of accuracy. Every casting is produced from a pattern which may be the property of the customer or of the foundry. There are, literally, hundreds of thousands of patterns in existence, each differing from all the others to a greater or lesser degree. It is obvious that such a lack of standardization in products necessitated a price filing system differing radically in character from the types employed by industries whose products are more uniform in character.

The filing of prices upon individual patterns, even if possible, would have been too unwieldy to prove successful. It was, therefore, decided to establish specific classifications for individual consumer industries having certain similar requirements. Members were permitted to file prices covering all castings embraced in such classifications.

Such a classification of products was an enormous task. Its success depended upon the activity of the Definitions and Classifications Committee of the Code Authority. This Committee, though at first not under that name, functioned during the entire Code period. (*) It was composed of a representative from each of the eight industry divisions. From time to time it met to review classifications and schedules filed by members. New classifications required approval by the Committee in order to become effective.

A tabulation compiled from daily and quarterly price reports (**) showing the increase in the number of classifications between December 5, 1933 and May 23, 1935 is presented in Table VII, below.

(*) Commercial Resolution No. 22 adopted May 7, 1934.

(**) See Section E, Dissemination of Price Filings, p. 621 below.

Table VII.

GROWTH OF NUMBER OF PRODUCT CLASSIFICATIONS DURING THE CODE PERIOD

Date		Number	Quarterly Report Number
1933	Dec. 5	532	a/
	" 26	774	a/
	March 31	1,117	I
	June 16	1,149	II
	Sept. 20	1,130	III
	Dec. 13	1,190	IV
1935	March 27	1,241	V
	May 23	1,221	b/

Source: Compiled by Statistics Section, NRA from Daily Price Reports of Steel Founders' Society of America.
a/ Daily Report
b/ Summary Report by Society

B. Quantity and Weight Differentials

Product classifications having been established, it was next considered necessary to standardize quantity and weight differentials. The Society describes the steps taken in this direction in the following terms:

> "The second major step in the design of a superstructure or framework which made possible the orderly filing of prices was to examine the past practice of the Industry regarding differentials based upon various weights and quantities of castings ordered. A study of this matter revealed that a series of weight and quantity brackets could be set up which would coincide with or closely parallel practically all of the schedule structure in use by the Industry. The following structure resulted.

Table VIII

UNFINISHED STEEL CASTINGS - PRICE PER LB. - NET

Quantity is determined by the number of pieces from one pattern ordered at one time

WEIGHT PER PIECE - LBS.	Number of Pieces									
	1-3	4-9	10-24	25-49	50-99	100 to 249	250 to 499	500 to 999	1,000 to 2499	2500 and over
1 to 5 lbs.(*)										
Over 5 " 10 "										
" 10 " 25 "										
" 25 " 50 "										
" 50 " 100 lbs.										
" 100 " 250 "										
" 250 " 500 "										
" 500 " 1000 "										
" 1000 " 2500 "										
" 2500 " 5000 "										
" 5000 " 10,000 lbs.										
" 10,000 " 25,000 "										
" 25,000 " 50,000 "										
" 50,000 " 100,000 "										
Over 100,000 lbs.										

"This framework lends itself to adequate flexibility as far as prices being filed is concerned since a foundry may specify 'N.Q.D.' -- 'NO QUANTITY DIFFERENTIAL' if it desires to apply a unit price regardless of quantity but

(*) For castings under 1 lb., special piece prices may be quoted.

varying as to weight per casting. Similarly 'N.Q.D. over 99 pieces' means that quantity differentials apply out as far as 99 pieces but the price for 50-99 pieces would apply on 100 pieces or more.

"The nature of this structure indicated the reason why steel foundries did not apply so-called 'manufacturers discounts.' The manufacturer who ordered in larger quantities secured his discount or price differential by reason of the larger quantities taking correspondingly lower prices per pound justified by lower costs attendant upon quantity production, whereas the casual buyer of only a few castings pays more per pound. Thus the matter of discounts to quantity buyers is taken care of in the price structure itself." (*)

The engineers who examined and spot-checked the "Price Study" (**), indicated that the practice of allowing discounts for quantity was not uniform. In many instances, in their examination, "the quantities at which such discounts started were not clearly defined." Evidently the Society was able to obtain more complete data on quantity differentials than the engineers who had included only a small sample of foundries in their study.

The N.Q.D. method of limiting discounts, described above, was extensively used throughout the filing of prices. The Society, commenting on the adequacy of the system stated:

"It is a composite of the best experience of the Industry as regards schedule structure. It has been found adequate, thoroughly adaptable and satisfactory."

C. Suggested Schedules Based on "Normal" Price Levels

The Society next took steps to furnish a guide to members as to "fair and reasonable" prices. Quoting from its own summary of its efforts in this direction.

"The third major problem in developing a price structure was to determine as a guide to the Industry, what could be considered fair and reasonable prices. This phase was covered by an extensive survey of price levels which required many months of work. The results of this survey were later verified by an outside engineering organization of national reputation by an actual survey in the field. They reported that the methods employed were sound and the conclusions accurate.

"The point of departure in determining prices which might reasonably be expected to attach to the products of the Industry was a normal level of prices. The year 1926, generally regarded as a normal business year, was taken as a base to determine normal price levels, in spite of the fact that statistics for that year showed anything but a satisfactory condition in the Industry as regards profitable operation."

(*) Letter from Code Authority to foundries -- November 20, 1934 -- Code Records Files

(**) See Chapter one, Sec. II, 3b, above.

"It was concluded that prices prevailing in 1926 could be converted into prices that might reasonably be expected to prevail in the last quarter of 1933 (when the survey was concluded) by applying the index composed of the elements of labor costs, raw material costs, etc. Such an index was developed which quite accurately reflected foundry production costs by substituting in the formula the average hourly wage rate of foundry employees, the published market quotations on the principal materials entering into the production of steel castings, etc. Equating this index at 100 for the year 1926 it was found that it stood at 87 in the fourth quarter of 1933. Thus prices current for the latter period might reasonably be expected to be around 87 per cent of the levels prevailing in 1926."

"The next step was to segregate all of the classifications which had been developed, into groups which normally sold at approximately the same level of price. It was found that there were 21 such groups, each of which represented a differential in price level from that of the other 20. This dictated the necessity of providing 21 different levels of price from which the foundries could select one or more to apply to each classification in which they were interested.

"The following steps were taken in evaluating these 21 schedules:

"First - a master pattern was developed containing values in the weight and quantity brackets previously described, such that each such feature of this master pattern was the fact that the values inserted in the framework were such as to give effect to the normal differentials applying to various weights and quantities.

"The prevailing 1926 prices for the 21 groups of classifications were then expressed in terms of discounts from this master pattern of values (not prices) and these discounts were converted into corresponding 1933 discounts by means of the sliding scale index, previously explained. Applying the resulting differential discounts of 1933 to the 21 groups, it was possible to construct 21 schedules representing as many different levels of price adjusted for changes in production costs between 1926 and 1933.

"This was the genesis of a series of schedules from which foundries can select a level of price to apply to any one class of castings." (*)

(*) Study of Schedules for miscellaneous Steel Castings Based upon 1926 Levels. -- Steel Founders' Society -- November 10, 1933. p.p. 3, 4.

Copies of this report were submitted to all members of the Industry about November 10, 1933. Each of the 21 price levels referred to above was designated by a letter of the alphabet, ranging from A through U. The schedule designated by A was the highest in price, that designated by U, the lowest. For each price schedule was shown a list of product classifications which the Society considered appropriate to it at the time. The schedules were computed on a "delivered price" basis, thus having the effect of making uniform a practice of quoting delivered prices to point of destination, whereas previously f.o.b. foundry or other point; or f.o.b. foundry, freight allowed to destination, were commonly used.

The Society invited the members to file their price schedules or actual prices, and to criticize the report. Most of the foundries indicated approval, though a number of changes were proposed. Apparently these suggested modifications were averaged with the original figures. As a result certain of the schedules included in the original report were reduced and a few increased. Many new classifications were added. Shortly thereafter, on December 5, a new report (*) in booklet form was issued to the foundries showing the revised schedules and classifications.

Table No. IX which follows gives a specimen of the price schedules and shows the actual price variations given for certain quantity and weight groups under each of the alphabetical classes.

(*) Idem -- Revised Report -- December 5, 1933

TABLE IX

Changes in Price Between Schedules for Various Weights and Quantities of Castings
(Price per Pound)

SCHEDULE	Weights and Number of Castings							
	1 to 5 lbs.		10 to 25 lbs.		50 to 100 lbs.		250 to 500 lbs.	
	1 to 3 pcs.	50-99 pcs.	1 to 3 pcs.	50-99 pcs.	1 to 3 pcs.	50-99 pcs.	1 to 3 pcs.	50-99 pcs.
A	$0.557	$0.404	$0.348	$0.253	$0.232	$0.180	$0.178	$0.152
B	.469	.340	.294	.213	.196	.152	.150	.128
C	.436	.316	.273	.198	.182	.141	.140	.119
D	.408	.296	.256	.186	.171	.132	.131	.112
E	.384	.277	.240	.174	.160	.124	.123	.104
F	.362	.262	.227	.165	.151	.117	.116	.099
G	.348	.253	.218	.159	.146	.113	.112	.095
H	.335	.243	.210	.153	.140	.109	.108	.092
I	.321	.233	.202	.146	.134	.104	.103	.088
J	.308	.224	.193	.140	.129	.100	.099	.084
K	.288	.209	.180	.131	.120	.093	.092	.079
L	.275	.199	.172	.125	.115	.089	.088	.075
M	.261	.190	.164	.119	.109	.085	.084	.071
N	.248	.180	.155	.113	.104	.080	.080	.068
O	.235	.170	.147	.107	.098	.076	.075	.064
P	.221	.100	.139	.101	.092	.072	.071	.060
Q	.201	.146	.126	.092	.084	.065	.065	.055
R	.188	.136	.118	.085	.078	.061	.060	.051
S	.174	.126	.109	.079	.073	.056	.056	.048
T	.152	.112	.097	.072	.067	.053	.052	.045
U	.147	.107	.092	.067	.062	.048	.047	.040

Source: Price Study, Steel Founders' Society of America, November, 1933

With respect to the general price levels represented by the schedules, the claim made in the second paragraph of the quotation from the industry's Price Study, above, that 1926 was not a satisfactory profit year, is noteworthy in view of the earnings data presented in Chapter One of the present report (*), from which an opposite conclusion might be drawn. Returns from about 40 companies tabulated there showed earnings during 1926 of 7.3 per cent of sales, as compared with 5.3 per cent in 1925 and 4.3 per cent in 1927.

Ford, Bacon and Davis, Inc., Engineers, who reviewed the Industry's Price Study, made the following comment:

(*) Table VI, Earnings and Capital Turnover, Chap. One, I, A, 4.

"During the examination of the 1926 selling prices, the Engineers found that in many cases the schedules used in 1926 were the same as those which were in effect in 1925, 1924 and in some instances even in 1923. Beginning in the latter part of 1926 the selling prices generally scaled downward and in most cases 1927 and subsequent schedules were at lower selling prices than those of 1926." (*)

Prices and profits were apparently at relatively high levels in 1926 and 1929. The latter seems to have been the better year, especially for "specialty" castings. It is also interesting to note that price levels in the Iron and Steel Industry during the last quarter of 1933 were about 80 per cent of the 1926 level; and in the Malleable Iron Castings Industry about 65 per cent of the 1926 level. The composite price index number, published by the National Bureau of Economic Research, on "producer's goods for capital equipment" was approximately 80, based on 1929 as 100. Durable goods prices on the average, were slightly lower in 1929 than in 1926. (**)

If the above figures may be taken as criteria, the 87 per cent of 1926 prices taken by the Steel Castings Society as approximating "normal" for 1933 may have been a relatively high level for the industry's products.

D. Regulations Concerning Filing of Prices and Terms of Sale

The following summary describes in general the requirements for filing of prices and terms of sale as prescribed by the Code and the Commercial Resolutions of the Code Authority, and gives a comprehensive view of the industry's pricing practices so provided.

(1) General Rules for Filing Prices

(a) Every steel foundry was required to file a list of its current prices with Steel Founders' Society, comprising all classifications of castings in which it was interested or upon which it would quote were it requested to do so.

(b) Every steel foundry was required to file a schedule of extras applying to alloy additions, heat treatments, specifications, etc., which were to be added to the schedules filed to cover rough carbon castings only.

(c) Standard machining operations on Railway Car Bolster Center Filler Castings were included in the extras upon which interested foundries were to file.

(*) Ford, Bacon and Davis, Co. - Engineers - Study of Price Schedules in Steel Castings Industry.

(**) Monthly letters from National Bureau of Economic Research.

(d) Plain carbon casting prices filed had to be in terms of minimum delivered prices of rough castings, and foundries were not to quote below their own filed prices.

(e) Prices filed on letter schedules related to rough, unfinished, unmachined miscellaneous carbon steel castings, either unannealed, annealed or normalized, but did not include cost of pattern equipment, machining, carbon and alloy additions, or other extras.

(f) A foundry had to file upon any classification of casting before it was privileged to quote or accept business thereon.

(g) It was required that a foundry wait ten days after filing a price lower than any filed by other foundries on similar castings before quoting or using this price.

(h) A foundry was allowed to quote a price on the same day it filed the price with the Society, provided such filed price was not lower than prices on similar castings filed by any other foundry. If, however, a foundry filed to meet a new low filing of some other foundry that did not become effective until ten days after the other foundry filed it, the foundry filing to meet this low filing was not to quote or use the new low price until the date the price filed by the original filer thereof had become effective.

(i) Foundries desiring to establish specific new classifications were to make application for approval thereof, but could not use such classifications for pricing purposes until the Industry's Definitions and Classifications Committee had approved them.

(j) If a new classification was filed by any foundry, all foundries interested in producing and selling castings coming under such new classification were required to file their current price thereon and could not continue to classify such castings under some pre-existing classification.

(k) The burden of proof that a lower price was being filed to meet competition rested with the foundry so filing.

(l) If a foundry had made a contract at a certain price and later revised its price upward, it was to file with the Society full details regarding such contract, giving effective date, expiration date or

termination clause, name of customer, classifications of castings covered, and prices applying to each classification.

(2) Quotations

(a) Quotations were not to be made at prices less than the delivered prices filed with the Society.

(b) In the case of castings upon which the actual weight was unknown, the foundry was required to quote a per lb. price only and not a lump sum price, and in the event the weight was estimated to fall at a point near the dividing line between two weight divisions on the schedule, it was to quote the per lb. prices which applied in either circumstance, i.e., if the actual weight was later found to be above or below the dividing line weight.

(3) Invoices and Discounts

(a) Foundries were not to date invoices later than the date upon which they were mailed or later than the third day following the date the castings were shipped.

(b) Foundries could not grant discounts greater than provided in Section 7 of Schedule D of the Code as amended.

(c) The maximum discount allowable for cash was 1/2 of 1 per cent. (See new Section 7, Schedule D, of the Code).

(d) There were no so-called manufacturers' discounts; the quantity differentials on the letter schedules provided for customers that bought in larger quantities.

(4) Quantity on Order

(a) The quantity on an order was normally the number of castings ordered at one time, from a specific pattern, which was required to be shipped or invoiced within 90 days from the date of the order.

(b) The foundry could not negotiate a contract for a larger quantity of castings and deliver a smaller quantity at the same price per casting applying to the larger quantity.

(c) Castings that were ordered in pairs or sets were priced upon the quantity of each individual type of casting included in the pair or set.

(d) Where patterns were so constructed as to produce two or more dissimilar castings joined together, and where the customer ordered such combinations of castings shipped in one piece, the number of each separate component casting determined the quantity of each, and the prices were based upon the individual weights.

(e) Where patterns were so constructed as to produce multiple castings of the same design but cast integrally in one piece, the quantity was determined on the basis of the total number of individual castings so joined, and the weight of the individual casting was determined by dividing the total weight of the integrated castings by the total number of individual castings so joined. This was not, however, to be construed as preventing the joining of members of an assembly, which were previously cast separately, but which could be redesigned in integral form, to be used as received from the foundry in such integral form.

(5) Pattern Equipment

(a) All pattern equipment furnished by the foundry was to be billed to the customer at not less than what it costs the foundry to make it.

(b) Pattern alterations made at the customer's request could not be charged to the customer regardless of whether the patterns belonged to the foundry or the customer.

(c) Foundries could not repurchase pattern equipment from customers in violation of Section 2 of Schedule D of the Code.

(6) Machining

(a) All machining performed by the foundry was to be billed to the customer at not less than cost.

(b) It was not permissible to partially machine castings without charging for the machine work performed.

(c) Holes drilled in lieu of using cores did not need to be considered machining within the meaning of Section 4 of Schedule D of the Code.

(7) Inspection Charges

(a) Foundries were to charge customers for expense incurred for inspection by outside individuals or agents when the customer specified such inspection.

(8) Back Charges for Welding

(a) Foundries could not agree to accept without reservation any and all back charges for welding by the customer. Should the foundry agree to accept such back charges, such acceptance could cover only individual castings or jobs in question.

(9) Pattern Insurance

(a) Foundries could not absorb the cost of insurance on patterns belonging to their customers and were required to charge the customer his proportionate share of the cost of "blanket" policies carried by the foundry.

(10) Responsibility for Damages

(a) Foundries could not agree to accept responsibility for consequential, special or contingent damages when otherwise they would not be legally liable for such damages.

(11) Summary

These rules operated to insure a uniform relationship between filed and actual prices. The filing agency realized the futility of attempting to gain success of operation by publicizing only one or two elements of a pricing structure, such as list prices and quantity discounts. Instead, from the start, the Agency made mandatory the filing of practically every conceivable element in the structure, including even contracts in certain instances; and defined as closely as possible all merchandising practices, ruling to be unfair any that might interfere with attainment of the ends sought under the price filing provision.

E. Filings For Different Distribution Channels

The principal channels of distribution for castings are (1) Sales Representative, Manufacturer's Agent or Commission Salesman, (2) middleman, and (3) purchases by customer-users.

1. Sales Representative, Manufacturer's Agent, etc.

A. Sales representative, */ manufacturer's agent or commission salesman is a person, firm or corporation that solicits orders for castings on behalf of a foundry. Such orders are referred to the foundry for acceptance or rejection, the foundry billing and shipping direct to the buyer. The salesman or representative guarantees payment of the invoice, assuming all or part of the credit risk. The title to the castings never passes at any stage of the transaction to such representatives or salesmen.

Prices were not filed with respect to sales handled through this type of distributor. It was understood that the prices they quoted were to be not less than those filed by the foundry by whom they were employed. Nor was it necessary to file the terms of any contracts with such representatives or salesmen, since these persons were employees of the foundry, who were remunerated for their services either in the form of a commission, salary, bonus, or a combination of these.

2. Middleman

The second class of distributor, known as a Middleman, (*)is a person, firm or corporation that performs a jobbing function for the foundry, buying the castings outright and reselling them as rough steel castings, in the same condition as received from the foundry, to the middleman's own customers. The middleman does the billing, and assumes the full and ultimate credit risk on the resale transaction. A purchaser may not be classed as a middleman and may not receive a discount in the event he machines, finishes, processes or fabricates the castings, or assembles them into integrated devices, machines, equipment or products of any sort.

---

*/ Definition contained in letter sent to foundries by Code Authority on May 24, 1934

(*) Ibid

It was required that all prices to middlemen be filed. They could be expressed in terms of discounts off regularly filed prices, provided such middlemen agreed to resell the castings at not less than the prices filed by the foundry that produced them. Such filings were required to give the following information: names and addresses of the specific accounts to which the discount was to apply; the character of their business; the nature of the services they rendered; and the precise terms of the agreement with respect to the prices at which the castings were to be resold.

The purpose of providing for a discount in the case of middlemen was to permit a foundry that was unable to cover certain territories economically with its own regular sales representatives to secure business through agencies that were in a position to service such territories and were willing to assume the full credit risks in connection with the resale of the castings. The extent to which these prices to middlemen were filed will be discussed in connection with statistical analyses in the following chapter.

3. Customer-User

The third class of distribution is that of sales made directly to user. The purchaser, the Customer-User (*) is defined as a person, firm, or corporation that purchases castings direct from the foundry or from a middleman for the purpose of using the castings either as a proprietary article of commerce in the same condition as received, or as parts or components of integrated structures, machines, assemblies, devices, or pieces of equipment.

It was required that all prices to customer-users be filed in terms of the letter schedules illustrated above (Table IX). Filings in terms of discounts off previously filed prices were not acceptable. Prices offered to specific customers on specific inquiries or orders were not required to be filed, as it was understood that such prices were to be not less than those already filed by the foundry. However, where a quotation had been given in connection with a specific project and it was necessary for the foundry to wait more than 90 days before receiving the award or release to produce and ship the castings, quotations or contracts had to be filed. In such cases it was required that a copy of the quotation or contract be filed with the Society within 90 days from the date thereof, indicating the reason for the delayed acceptance or release of the shipment.

There are no statistics available to indicate the volume of castings accounted for by each class of buyer listed above. However, it is safe to say that by far the major part of the Industry's output is sold direct to user. The prices filed on sales or quotations to users are those tabulated in the Daily Price Reports.

There is a small percentage of output which is sold by various foundries to affiliate companies. The prices on such sales were not subject to filing regulations.

(*) Ibid.

F. Dissemination of Price Filings (Publicity)

The Steel Founders' Society of America, located in New York City, which was both the Code Authority and the Price Filing Agency, was the headquarters for the receipt and dissemination of all prices filed during the Code. Industry members sent price filings and revisions, usually by mail, to the Agency.

1. Daily Price Reports

The Agency, upon receiving the filed price, reviewed it in order to determine whether it was a new low price for the Industry, a filing to meet competition, or simply a revision of a price previously filed on the classification in question. After its status was decided, the new filing was included with others, and typed and mimeographed, usually in the same language as received. The various pages of filings were combined to form what was termed the Daily Price Report.

During the Code period, 386 of these reports were issued to the members of the Industry. The first daily report was distributed on December 15, 1933. In Daily Reports No. 1 to 29, inclusive, only prices which were lower than those contained in the December 5 Report, the first quarterly report, and in Daily Report No. 6 were included. As has been stated, Daily Report No. 6 contained price schedules which were lower than those tabulated in the December 5 submission. In these early Daily Reports the effective date of the price was usually indicated, though many were listed in which the date was not specified. Beginning with Daily Report No. 30, the Agency reported all prices filed, whether they were lower or higher than the Schedules in the Reports referred to above. The dates the schedules went into effect were also consistently tabulated.

Daily Price Report No. 60 initiated a revised system of reporting by the Agency. Thereafter, throughout the Code period, reports were compiled in the following form,

FDY. NO.	FILED 1935	EFFEC-TIVE 1935	CASTING CLASSIFICATION	SCHED-ULE FILED *
402& 602	3/18	4/1	File same classifications and schedules for Railway Cstgs. as filed by Foundry 105 and reported in Daily Report #333.	
407	3/18	3/18	Valve Bodies	K R
"	"	"	" Parts-Pressure, NOCBN.....	K "
"	"	"	" " " - Bonnets.....	K "
"	"	"	" " " - " (With Yoke Cast Integrally).....	K "
"	"	"	" " " - Caps.....	K "

The above form is self explanatory, unto the exception of the column. The letter in this column indicates the status of the filing (L for new low or minimum schedule; F for new classification, W for withdrawal, and R for merely a revised Schedule). About September, 1934, the following indications of status were included in the reports: DL for signifying divisional low schedule; DN for divisional new classification; and H for a schedule which represented a price increase over the one previously filed.

In addition to schedules and classifications, various notices concerning price filing policy, originating with the Agency and designed to emphasize certain rules and regulations, were included in the Daily Reports. Other such Reports contained statements filed by members concerning contract relationships, freight allowances to railroads, discounts allowed to middlemen, extras, and similar information. These reports represented attempts to insure a maximum of publicity.

According to information supplied by the Society, filings for over 150,000 items were made. This is assumed to mean not only filings on individual classifications of various products, but also other items, such as withdrawals, price extras, etc. There were 4,763 filing schedules submitted by the foundry members. Many of these, of course, were on great numbers of classifications; many were statements on discounts, filing of extras, etc. The number received from the various geographical Divisions, follows:

TABLE X

AVERAGE NUMBER OF FILINGS PER FOUNDRY, BY DIVISIONS (*)

Division	Number of Times Filed	Number of Foundries	Number of Filings Per Foundry
I	739	31	23.8
II	500	10	50.0
III	199	13	15.3
IV	540	25	21.6
V	1,025	23	44.5
VI	1,233	41	30.3
VII	180	16	11.2
VIII	347	34	10.2
Total	4,763	193	24.6

Source: Compiled by Statistics Section, N.R.A., from Daily Price Reports of Steel Founders' Society of America.

Divisions V and VI accounted for nearly a half of the major filings, while foundries in Divisions II, V, and VI filed most frequently. Divisions V and VI also accounted for over 40 per cent of the Industry's volume. (See Table III Page 575 Chapter I)

Table of the appendix gives an idea of the approximate number of days elapsing between the date a price was filed by the foundry and the date of its inclusion in a daily price report. The date of the post-mark was taken as the date of filling. This table was developed in three parts.

(*) While this compilation does show satisfactorily the approximate number of times a foundry filed, it does not, in any manner, indicate the number of items filed upon.

The first, Appendix Table V-A, shows the average number of days elapsed for each type of filing. The second part, Appendix Table V-B, shows a similar average based only on filings for which the elapsed time was less than 10 days, (the length of the waiting period in the cases of new and low filed schedules). The third section, Appendix Table V, is based on cases in which the elapsed time was ten days or longer.

The time elapsed between receipt of schedules and their dissemination to the industry varied with the distance of the Division from the New York headquarters of the Code Authority. For the Southern and Pacific Division, (Divisions III and VIII, respectively) the period was longest. For Divisions I and II, the Divisions nearest New York, the most common type of filing, a revision of a previous list, was usually reported to the Industry within two days of receipt..

The third part of the table presents averages of filings which, for reasons usually not known, were not reported to members within ten days after their filing. There were 145 such filings, some of which were not reported until after two or more months had elapsed. The agency submitted explanations with reference to some of these delays. The following case, a low filing for six classifications, was not reported for 18 days.

> "This filing was made on January 20. This office attempted to secure confirmation but received no response. Accordingly we are now reporting this filing to the industry and under the circumstances it must, of necessity be considered as effective at once." (*)

The second case, a filing listing 10 low and 139 revised schedules was unreported for 27 days:

> "In Report No. 95, foundry 815 was listed as filing the same prices as 4 other foundries. Due to an error in checking the filing we erroneously reported their filings as being identical with those of the other four foundries mentioned in the notice. A recheck indicates that Foundry 105 filed the same prices as these other foundries with the exception of a few not filed upon and a number of additions." (**)

The only other case of delay explained by the Agency was for filings of 4 low and 3 revised schedules which were not reported for 16 days.

> "NOTE: On July 10th, Foundry No. 637 filed the above prices, but the letter was mislaid and has only just come to our attention." (***)

(*) Steel Founders' Society of America--Daily Price Report No. 92, April 10, 1934. Code Records Files.

(**) Steel Founders' Society of America--Daily Price Report No. 112--May 4, 1934.

(***) Ibid--Daily Price Report No. 176--July 26, 1934.

According to the tabulation there were 24 instances in which filings of low price schedules were not reported for an average elapsed time of 20.4 days, more than twice the normal waiting period. It is difficult to explain this delay in reporting of filed schedules. In one instance, however, a foundry submitted a notarized statement to the effect that it has filed prices at some previous date which, for some reason, had not been delivered to the Agency.

In the cases of filings on new classifications it is possible that the Definitions and Classifications Committee required the extra time to review the proposed new classification. Usually, however, new classifcations were published in 4 or 5 days and "low" schedules in approximately 3 days.

The averages in the second part of the table are far more representative of the actual elapsed time than the exceptions just discussed. These figures are based on hundreds of filings. In most cases, it can be concluded, filings were handled and disseminated in a very short time, much less than the 10 day waiting period.

2. Quarterly Reports

Another important method used by the Agency in disseminating price information was the publication of booklets known, as Quarterly Reports. These booklets, which were published at various times during the Code period, had as their major purpose the publicizing of price Schedules. They were summaries of the prevailing price levels and exceptions thereto included in the daily price reports during the quarterly periods preceding their issuance. They included the most recent revisions of all pricing practices. Furthermore, they listed the price schedules prevailing in the Industry for each classification and the number of foundries which had quoted exceptions to any price Schedule.

The foreword of the quarterly reports usually contained such information as (1) definitions of schedule specifications, quantity on order, industrial applications, price extras, etc., and (2) rules concerning filing of prices, quotations and invoices, etc. Usually a section of the report contained a tabulation of all price extras, indicating which foundries had filed exceptions to them.

In addition to showing the prevailing minimum levels on all miscellaneous steel castings classifications, the "quarterly reports" usually showed as a separate tabulation the base schedules on high tensile steel railway freight and passenger car castings and their extras. These were listed separately from ordinary miscellaneous castings because of their difference in tensile strength.

The Quarterly Reports published early in the code period were naturally not as complete as the ones compiled later. The first was the December 5 report, although it was not specifically termed a quarterly report by the Society. It was published before the filing of prices was formally "called". It contained, as previously explained, a suggested schedule for each of 532 classifications. Only one schedule for all eight divisions was indicated. Starting with Quarterly Report No. 1, separate schedules for each division were included.

Daily Report No. 6, December 26, 1933, while differing in form from the quarterly reports, was used for a similar purpose. It contained a summary of all new classifications and new low schedules filed in Daily Reports Nos. 1 to 5, which differed from those included in the December 5 Report. It included 210 new low schedules and 242 new classifications.

The method of indicating the minimum schedules in the First Quarterly Report is described as follows in the booklet:

> "The basis upon which schedules filed are reported in this booklet is to indicate as clearly as possible the minimum levels which have been filed by foundries in the various geographical Divisions. In the case of classification where the minimum schedules filed do not rest upon a broad base an effort has been made to describe the exact situation indicating the foundries or divisions that have filed differential minima.
>
> "In the case of classifications on which the minimum schedules filed by foundries in all Divisions are the same, such minimum schedules are placed under the caption of 'Minimum Schedules - All Divisions.'
>
> "In a few cases foundries in only one or two Divisions have filed schedules on certain classifications on which production is apparently confined to limited areas. In such cases, if the same minimum schedules have been filed by at least one foundry in each interested Division then such minimum schedule is also placed in the column bearing the caption: 'Minimum Schedule - All Divisions.' The term 'all others' usually means minima all other divisions." (*)

Filed prices for eleven hundred and seventeen classifications were published in the first quarterly report. For 913 of these classifications identical price schedule were shown to have been filed by all members of the Industry. The remaining 204 classifications had several different price schedules filed on each, varying according to weight brackets and geographical divisions. Within a month after the issuance of the first quarterly report, the Definitions and Classifications Committee met and declared that a great many of the above 204 classifications were being improperly quoted. In a publication sent to the members on April 25, 1934 (see page B-202), the prices on these items were revised, generally upward, and a level set below which no foundry was "expected" to file. This is one of a very few instances of similar administrative action in this Industry. In effect it established a "price floor" for the items in question - that is, for those items on which variations had appeared in the price filings.

The method of reporting prices in the Second Quarterly Report was virtually the same as in the First Report. In contrast to the first, in which there were 204 classifications for which different schedules, varying according to weight and to location of the foundry had been filed,

---

(*) Steel Founders' Society of America-- First Quarterly Report--March 31, 1934

only 71 such classifications were so listed. One minimum schedule for all divisions was prepared for practically all items. Almost without exception the levels set by the Agency in the April 25 Bulletin were the schedules quoted in the Second Quarterly Report. Extras were listed for the first time in this issue - the formal "call" for their filing was made only one day before this Report was released. However, it is assumed that there were sufficient filings of "extras" already on hand to enable the Agency to report the prevailing levels. Accompanying the booklet was a request by the Agency that all foundries testify as to the correctness of all schedules in this Quarterly Report which they had filed or, if errors were noted, to report them promptly. A compilation derived from the Daily Reports indicates that of 160 foundries complying with this request only 9 submitted any exceptions to the schedules in the Second Quarterly Report. Table VII, Exhibit I shows that relatively few new, low minimum schedules were filed during the months following the publishing of this Report. Apparently, by this time, prices had been relatively well stabilized at levels satisfactory to the member foundries.

The Third Quarterly Report was similar to the second in form. The schedules prevailing in each geographical division were tabulated in separate columns. This permitted distinctly easier reference.

The Fourth and Fifth Quarterly Reports improved upon the earlier ones only in a foreword which was slightly more explanatory as to terms and methods of filing, and in more complete tabulations of "Price Extras." The Summary Report issued on the last day of the Code Period was the last compilation of price information to be disseminated by the Code Authority.

These quarterly reports were apparently the most useful of the various means of disseminating price information used by the Agency. Members were kept informed at all times of prevailing prices and exceptions to such prices.

Only member foundries were eligible to receive the data distributed by the Agency. Members were discouraged from permitting customers to review these price compilations. Foundries were advised not to mention, in quoting a price to a customer, that such price was the same as a competitor's.

G. Filing Methods Employed by Members

During the operation of the Code the following three distinct methods of filing were used by members:

(1) Filing schedules or statements on specific named classifications or elements of the price structure (discounts, contracts, etc.).

(2) Filing the same schedules on the same classifications as some other foundry had filed, usually naming the Daily Report Number in which latter had filed.

(3) Filing all or part of the schedules listed in a specific Quarterly Report. These were termed "blanket filings."

The first method was most common. In the early Code period the foundry would list, on an ordinary letter head, the classifications and the schedules it desired to file, and send it to the Code Authority. Later prices and information were submitted on a special form provided by the Code Authority.

The second method was also extensively practiced. Such filings often took the form of, "Foundry 206 files the same prices as Foundry 210 in Report No. 326." This made it simple to meet new low prices filed by a competitor. This method was used very frequently in the filing of "Price Extras."

About 165 foundries, some of them quite frequently, used the third plan, "blanket filing." (*) The Code Authority encouraged the use of this method of filing schedules identical with those contained in the Quarterly Reports. Although a member might manufacture only a small proportion of the classifications listed in the Quarterly Report, it was the practice to file all prices contained therein for a specific Division. At various times foundries filed "blanket," purporting to meet all minimum schedules on file with the Code Authority or that any time were filed with the Code Authority. In Daily Report No. 50, the Code Authority ordered this practice discontinued, as not in compliance with the Code.

In compliance with Code Authority rules and regulations, in addition to price schedules information was filed on sales contracts, allowances for freight charges, allowances on patterns and equipment, discounts to other foundries (middlemen) and other allowances, and price extras.

In Chapter V following will be presented a statistical analysis of the various types of filings received and reported by the Code Authority; and in Chapter VI a similar analysis of the trends of price changes for certain representative products as disclosed by these filings.

(*) Authorized by Commercial Resolution No. 30, October 10, 1934

CHAPTER IV

Discussion Concerning Operation of the Open Price Plan

I. COMPLIANCE AND ENFORCEMENT

There is very little record as to compliance with or enforcement of the price filing provisions of the Steel Castings code.

On January 22, 1934, Administrative Order No. 82-7 authorized the Code Authority to handle trade practice complaints. No record is available of the action of the Code Authority in handling such complaints. It is believed that a large majority of the complaints submitted were handled and adjusted informally. The records indicate that 184 foundries of 97 percent of the total of 190 filed their prices with the Code Authority.

The Compliance Division handled only five trade practice complaints cases of which three were adjusted and two were found to be cases of non-violation. No Trade Practice cases were submitted to the Regional Boards.

II. ATTITUDES AND OPINIONS OF INTERESTED PARTIES

On April 7, 1934, the Administration Member forwarded the following letter to the Division Administrator, pointing out certain loopholes in the price provisions which permitted members of the Industry to evade the requirements of the Code.

"Three technical sources of evasion of the observance of established fair prices in bidding on manufactured equipment have come to my attention:

"1. Where the bidding company operates a department that produces a component part of material around which an important industry has been built up. If the component parts or material are not charged into the finished product at a price in keeping with the filed prices of the industry specializing in that component material or part, the latter industry is obviously prevented from fairly competing for such business with other manufacturing firms which do not operate a department capable of supplying the material in question.

"2. If the manufacturing company has an affiliate which is exempted from observing the prices filed by the industry producing the material or component, the result is the same as above.

"3. Certain manufacturing concerns, the status of which is not clear in specific pieces of business, as to what particular Code they are working under, may work an obvious hardship to an important industry by claiming to come under a Code that allows the action they desire to take.

"The result will be the same: The production and use of material at prices which are ruinously low as compared with the filed prices of the industry affected.

"Code Authorities are naturally deeply concerned as to how this abuse may be promptly and effectively remedied.

"The Steel Casting Industry is now wrestling with a typical case, that of a contract for twenty pumps taken by the Bucyrus-Erie Company of Milwaukee at a price of $156,000 as against the next lowest bid of $208,000. The steel castings alone, at filed prices, amounted to $115,000 and the value of materials only, as figured by other bidders amounted to more than $156,000. The Bucyrus-Erie Company operates its own foundry, so it is evident that they either did not figure their materials in at filed prices or ignored their fabricating and assembly costs.

"On account of the possible wide application of these sources of evasion, I would suggest that a general order be issued to the effect that no manufacturing company bid on or accept contracts for material or equipment where raw materials, component parts or services involved are not figured in conformity with the filed lists of the various code groups directly responsible for such raw materials, component parts or services. Such an order ought to prevent much chiseling and evasion of this character, and would place in the hands of injured Code Authorities a simple and effective weapon to combat the practice." (*)

Apparently the price filing plan, adopted by the Code Authority, was not satisfactory to all members of the Industry. A letter from the W. W. Pettis Company addressed to Senator Alben W. Barkley under date of February 27 1934 stated that the price schedules were set up by the larger foundries and were acting to the detriment of the consumer and the small business man. (**)

This letter was transmitted to General Johnson, who replied under dates of March 13, and 17 stating that the Administration Member of the Code Authority had been requested to make an investigation of the situation and that further details from Mr. Pettis would be appreciated. A letter from Mr. Pettis to General Johnson dated February 23, 1934, states in part:

"My business is forced to operate under the Steel Foundry Industry Code as arranged at meetings of the Industry which meetings were dominated by the large interests. In connection with the code, and by its authority, there are issued a number of Price Schedules with a Classification List, under which everyone in the business must work or be penalized.

(*) Letter from Code Administration Member to Division Administrator April 7, 1934. See Price Filing Unit Work Sheets.- Steel Castings Ind.
(**) Price Filing Unit Work Sheets - Steel Castings Industry.

"However, in making up the Classification List and Schedules, the Large Interests very shrewdly divided the Steel Castings Business into two classes of work, viz: Miscellaneous Castings and Specialties. Specialties in normal times being practically, I would say, about ninety percent of their product, while the Smaller Foundries can make only Miscellaneous Castings, therefore, the Large Interests very wisely did not include specialties in the Classification List, or Schedules, leaving a free hand in making prices on them but tieing up the makers of Miscellaneous Castings hard and fast." (*)

Under date of April 7, 1934, the following letter was received from the Administration Member unto reference to this complaint.

"Some 14 companies in the industry manufacture specially designed and in many cases patented devices, chiefly intended for use in car construction. These individually engineered products, as I understand it, make up the 'Specialty' classification.

"The companies making such products have signed a patent pooling agreement among themselves, under which they exchange cost or price data. Prices, however, are not publicly filed.

"In view of their proprietary rights in such products, and the fact that they are cooperating within this particular trade division of the industry to prevent harmful price cutting, I do not see how they are doing harm to the smaller foundries which specialize in the making of competitive contract castings.

"From the standpoint of protecting the consumer, I would imagine that the railroads and car manufacturers are protecting themselves by trading; otherwise they would complain." (**) On June 9, 1934, a letter was forwarded to the Code Authority by the Assistant for Code Administration quoting a complaint received from the Lewistown Foundry and Machine Co., Lewistown, Pa. This complaint made the following specific charges:

" 1. Prices for castings previous to the institution of the Code were materially lower than they are at the present time.

"2. Prices after the effectiveness of the Code were excessive and resulted from agreements entered into by producers——

"3. Previous to the institution of the Code certain types of buyers were given different price schedules whereas now these buyers receive no consideration."

(*) Code Records File
(**) Letter from Code Administration Member - April 7,1934 - See Code Records' Files.

The Code Authority replied to this complaint at some length and investigation was promised.(*) The statement was made that prices of steel castings had advanced only 10.2 per cent since July, 1933, although production costs had increased approxiamtely 20 percent.

On June 18, 1934, the International Clay Machinery Company forwarded a letter to General Johnson objecting to many of the provisions of the Code.

Excerpts from this letter follow:

"The Cast Steel Code, therefore, works to the advantage of all concerns not operating a steel foundry, as follows:

1. "A steel foundry with a machine shop attached, can either put their castings in at the code prices and charge either nothing, flat labor, or flat labor and partial overhead, in making their bid. Or, they can put their steel castings in at a lower price than we can buy them, and then charge anything for their labor that they please, which means that we and all similar concerns purveying to the Government in the past, are automatically out on the quotation.

2. "A steel foundry without a machine shop can put their castings in at either the Code price or any price they please, and then get some local machine shop chisler to give them a price on the machining, which, with their f.o.b. destination clause in the Code, cuts everyone else out who does not have a steel foundry, and who must pay freight from one location to another on the raw steel castings.

3. " A concern operating a general manufacturing plant holding considerable stock in a steel foundry juggles the supposed Code price on castings as obtained from their subsidiary and their own machine work in such a manner that we who are not associated with a steel foundry, cannot meet this competition.

"To back up our statements in this matter, we are attaching a series of bid compilations as furnished us by the War Department in recent months."(**)

III. INDUSTRY REACTIONS TO OFFICE MEMORANDUM 228 AND EXECUTIVE ORDER 6767

Under date of June 9, 1934, the Code Authority addressed a letter to all members announcing that it would vigorously oppose any amendment of the Code to conform with Office Memorandum #228

(*)Letter to Division Administrator form Steel Founders' Society, Price Filing Unit Work Sheets -- Steel Castings Industry.
(**) Letter to General Johnson from International Clay Machinery Co.- June 18, 1934. Price Filing Unit Work Sheets - Steel Castings Industry

On June 11, 1934, a telegram on this subject was forwarded to General Johnson asserting that the waiting period was considered the very essence of their open price policy and its elimination would lead to "the return to the conditions of chaos" in their industry. The immediate withdrawal of Office Memorandum #228 was urged.(*)

On July 5, 1934, the Steel Founders' Society of America forwarded a letter to General Johnson protesting Executive Order No. 6767 and petitioning for its withdrawl. Excerpts from this letter are as follows:-

"Prices on the average represent an advance of about 10% only by comparison with those of July, 1933 while costs have increased nearly 20% and current prices are lower by approximately 13% than in 1926, a normal year. It may not therefore be asserted with any justification that the general level of current prices in this Industry is unfair and unreasonable.

" . . . . The government may not fairly assume that it is entitled to preferential treatment by being accorded prices lower than those to other customers. The reverse proposition could easily be demonstrated.

" . . . . Government requirements are mostly of a special character calling for castings of an individual type making it impossible, weight for weight of castings compared, for producers of steel castings to obtain costs comparable with those of products sold to other large customers.

" . . . . It should be manifest that it would be impossible to maintain a differential in favor of government castings as against castings of similar weight classifications for other users.

" . . . In the light of the admitted and well known fact that government castings are more costly, how could such a differential be justified and maintained?

(*) Steel Founders' Society - Telegram to General Johnson, June 11, 1934 - Code Records' Files.

" . . . It is not necessarily true that prices are collusive, excessive and non-competitive, merely because they happen to be identical. Though identical, or approximately so, these prices usually represent the lowest that any member in the Industry feels he may quote in any circumstance.

" . . . It is contended that the Executive Order of June 29th is unfair because it does not give consideration to conditions in individual industry. - - - It is destructive to morale in industry at a most critical period of recovery because it is a definite invitation to the "chiseling" minority again to resort to the tactics which brought about the demoralized conditions of 1932 and 1933.*

On August 13, 1934 a formal petition regarding exemption of the Industry from the provisions of the Executive Order was filed with the Administrator. In subsequent correspondence the Code Authority was advised that in order to secure a reduction in the 15% tolerance it would be necessary to present evidence to the effect that the Executive Order had resulted in destructive price cutting.

There appears to have been no further action relative to this matter. In a letter of November 9, 1934 from the Code Authority to members of the industry it was pointed out that the Executive Orders did not apply to quotations or sales to contractors or subcontractors, even though the castings might be used for a government job. It was also emphasized that the Executive Order was permissive only and not mandatory and "that members of the Industry have the right to ignore it if they chose." The letter reported that there were only three instances to date in which the members of the industry had made the price concessions permitted by the order. (**)

IV. LATER CODE AUTHORITY AND NRA ATTITUDES

On January 25, 1935, the Steel Founders' Society of America addressed a brief to the National Industrial Recovery Board on the general subject of the open price plan, presumably in connection with the hearings being held at that time. This document sets forth clearly the attitude of the industry regarding the open price plan. Excerpts are quoted below:

(*) Letter - Steel Founders' Society of America - to General Johnson - July 5, 1934 - Code Records' File.

(**) Letter to foundries from Code Authority - November 9, 1934 - Code Records' File.

"The Steel Casting Industry is not interested in price-fixing as correctly defined and properly interpreted. It is intensely interested in the Open Price Plan with a waiting period, such as it has operated under for a period of fourteen months through its Code of Fair Competition, which was approved by the President on November 2, 1933. It desires to go on record with regard to the following propositions:

"1. That the Open Price Plan with the waiting period, while undeniably tending toward uniformity of prices, and therefore stabilization

(a) Is not a method of Price-Fixing;
(b) Does not necessarily involve coercion, intimidation or collusion;
(c) Does not eliminate fair competition;
(d) Is not oppressive to small enterprises; and
(e) Is not against the public interest.

"2. That the Open Price Plan without a waiting period is meaningless and valueless.

"3. That no general prohibition applicable to all industries, against the use of the Open Price Plan with a waiting period, should be prescribed. Conditions vary as between industries. Each industry should be the subject of independent study and consideration.

"4. That the use of the Open Price Plan with a waiting period should be encouraged. If an industry can prove the desirability, and in certain cases the necessity of the Open Price Plan with a waiting period, it should be accorded the privilege of operating under such a plan.

"5. That the Open Price Plan with a waiting period is needed as a protection against unscrupulous and dishonest buyers.

"6. That most buyers are imbued with a sense of integrity, accept the Open Price Plan and believe that it is fair to all.

"7. That One Price Plan (a very good example of the Open Price Plan) has become an established institution through years of use in department store merchandising. It has been applauded and hailed as the fairest known method of selling. The same practice prevails with the catalog houses. If that be true with respect to those institutions, there is no logic in denying the probability that the same will be true in industry.

"8. That it has been the established policy of Federal, State, Municipal and other governmental agencies to make public a list of all bidders, together with their prices, when a contract is awarded by such agencies. This practice has profoundly influenced the making of bids and has usually resulted in lowering the price levels for materials sold to such agencies. The Open Price Plan

with a waiting period is not detrimental to the interest of such agencies and generally will likewise result in the lowest obtainable levels of price.

"9. That many industries without the stabilizing effect of the Open Price Plan with the waiting period cannot support the labor provisions in their codes." (*)

Under date of May 16, 1935, the Consumer's Advisory Board (**) reviewed the various provisions of this Code and recommended that many of the Commercial Resolutions issued by the Code Authority be stayed as contrary to policy. In addition the Board criticized the Industry's pricing practices as follows:

"The members of the Code Authority have frequently made statements to the effect that industry members are allowed the utmost freedom in price filing, that the system worked out by the Society provides merely for more intelligent pricing based on knowledge of each other's filings, that any uniformity of prices as a result of the system has been a uniformity at the point of lowest filed price, and that there is no price-fixing, etc. And the Consumers' advisory Board has had great difficulty (in this and in similar situations) in finding any terminology that can be used in common with the Code Authority in such a discussion. What this Board understands by "price fixing"is price control, a control of all or any of the price factors making up the net price; and there are many such price factors. Under this meaning of the word price-fixing, there has been no fixing of base prices in the Steel Casting Industry but there has been a fixing of weight and piece extras and deductions. This latter class of prices is an important component part of the net price as is any other, and Commercial Resolution No. 16 very definitely takes this factor out of the realm of price filing into that of price fixing." (**)

"It might seem a far cry from classification to price fixing. But even if price fixing were not involved, the assumption of power to classify products in this industry can be justified by no provision in the Steel Casting Code. In our opinion such a power, wielded as the code authority may see fit, has tremendous possibilities. Its implications include the ability to harass industry members who are obstreperous, although observing the letter of the code. But it has price control implications also, because the ability to put classifications on a common basis would surely enable the influential members of the industry to exercise

---

(*) Brief on Price Control Provisions in Codes of Fair Competition -- Steel Founders' Society of America -- January 25, 1935.

(**) Consumers' Advisory Board, L. B. Lovell Memorandum to J. B. Freund, Deputy Administrator - May 16, 1935.

their powers of price leadership to function to the fullest extent. And this is no theory. Such a succession of events has occurred in other industries, with well recognized results. Products classification is another one of those factors the control over which makes it so much harder to file a price in relation to your costs and your market and much easier to file prices identical with those considered desirable by certain of the larger foundries."(*)

Further discussion or action with respect to the subject was halted by the Schechter decision, May 27, 1935, declaring the NRA unconstitutional and voiding the codes.

(*) Consumers' Advisory Board, L. B. Lovell Memorandum to J. B. Freund, Deputy Administrator - May 16, 1935.

CHAPTER V

STATISTICAL ANALYSIS OF TYPES OF FILINGS RECEIVED

This chapter will attempt to present a statistical picture of the nature and frequency of the different types of filings received by the Steel Castings Code Authority during the life of the code, as obtainable from its own reports of these filings.

The analyses included will appear in the following order:

I. Analysis of Filings Relating to Prices.

- A. Frequency of Filing of New Low Prices and New Classification Schedules.
- B. Extent of Use of "Same As" Filings.
- C. Extent of Use of "Blanket" Filings.
- D. Use of Withdrawals.

II. Analysis of Filings Relating to Discounts and Allowances.

- A. Discounts to Other Foundries
- B. Allowance of Freight Charges.
- C. Allowances on Patterns and Equipment.

III. Analysis of Filings Relating to "Price Extras".

IV. Analysis of Filings Relating to Contracts.

I. ANALYSIS OF FILINGS RELATING TO PRICES (FOR CUSTOMER-Users)

As far as it was possible to determine from the price filings quoted in the Daily Reports, the following data were obtained and tabulated for e each steel casting foundry:

(a) The number of times filings of any type, price, discounts, allowances, etc., were made with the Society.
(b) The number of new low minimum schedules filed (L).
(c) The number of schedules filed on new classifications (N).
(d) The number of divisional low schedules filed (DL).
(e) The number of divisional new classifications filed (DN).
(f) The number of increased prices filed (H).

The above tabulations all refer to prices filed for Customer-Users.

Each new low minimum schedule was the lowest on record from the beginning of the Code to the date of its filing. These schedules were always subject to a ten day waiting period before becoming effective. The ten day waiting period also applied to new classifications. All other types of filing became effective immediately, except that filings to meet competition did not become effective until the ten day period applying to the original filing had expired.

Table VI Exhibit I shows the frequency distribution of filings by divisions. Practically all foundries participated in the filing of prices Some foundries filed very frequently, while others were relatively non-participant. Those foundries which did not take part in the filing, as

indicated by the daily reports, were nos. 406, 409, 610, 710, 716, 809, 817, 829 and 833. These were without exception very small conserns with an average monthly capacity of about two tons each. No filings were recorded for foundries nos. 702 and 703, operated by the American Steel Foundries Company, the largest unit in the Industry. It is assumed that sales or quotations made by these foundries were filed by other units of the company.

This record of the total number of filings made by each foundry gives no idea of the actual number of classifications on which filings were made. As most of the filings on individual classifications were merely revisions, no exact statistical tabulation was made. However, a count was made of all other important changes resulting from this system of price filing. Table VI Exhibit I shows the number of each of these filings for each geographical division. Totals of these tabulations are not significant when considering the Industry as a whole, because of duplications. A number of times three or more foundries sent in identical "low" filings on a number of schedules, which were recorded in the daily price reports as one filing. In view of this fact, the number of "L's" or low schedules placed on record indicated that only one foundry, instead of several, had filed classifications. In this tabulation, such filings are included as though each foundry had filed on separate classifications; in other words, the number opposite each foundry represents the number of times it participated in the creation of such filings, regardless of whether the filing was made alone or in combination with other foundries.

A. Frequency of Filing of New Low Prices and New Classification Schedules

As recorded in the price reports, less than half of the foundries initiated the filing of new low prices. A considerable number of the "lows" that were listed were filed by the smaller members of the Industry. Foundry No. 705, the Duncan Foundry and Machine Works, having a monthly capacity of less than ten tons, was responsible for almost 200 of the total of approximately 800 "low schedules."

An explanation of this record of unusual filing activity is included later in this chapter.

In a great many instances, the schedules on classifications eatablished early in the Code Period were not changed. While the price reports did not disclose the names of the foundries which filed the original low, it is believed that on the more important classifications the large and the most efficient foundries created the "level."

Nearly all foundries participated in the filing on new classifications. However, foundries in Divisions V and VI filed nearly three-fourths of these. The DL, DH, and H types were first filed toward the end of 1934.

Most of the new low prices and new classifications were filed during the first few months after the Code became effective. (See Exhibit I, Table VII.) While there were in all about 1,200 classifications, relatively few price reductions were filed after that early period. This is an indication of the stability of prices during most of the Code period.

B. Extent of Use of "Same As" Filings.

Table VIII, Exhibit I, gives a sample of "same as" filings. In filings of this type, procedure usually followed was to file the same schedules or information included by another foundry in a specified report, thus meeting competition. This type of filing, according to the Agency, reduced the amount of clerical work, which in some other types necessitated the recording of schedules on hundreds of classifications. Filings of this "same as" type also tended to promote uniformity of prices. Data appearing in Appendix Table VIII relating to price filings of Extras, Railway Freight assumed by certain companies in establishing prices for these items.

That "same as" filing met with considerable favor was indicated by the fact that it was used by 157 foundries, at one time or another. It was in general use only where a considerable number of classifications were involved.

C. Extent of Use of "Blanket" Filings

The "blanket" filing was frequently used. (Appendix Table IX.) In a filing of this type, the foundry merely stated that it filed all schedules for a specific division to conform with those shown in a specific quarterly report or bulletin issued by the Agency. In some cases, the foundry indicated that it filed all the quarterly report schedules with certain exceptions or additions to those listed in the quarterly report. There were 496 filings of this type; 165 foundries employing it at least once.

D. "Withdrawals"

I. The Nature of Withdrawals

The practice of withdrawing price schedules was one of the features of the Steel Casting Industry open-price system. The 386 reports of the Steel Founders' Society show two classes of withdrawals. In the first class, the withdrawals were accompanied by a refiling for the same product effective the same date as the withdrawal. Apparently, there was only one real difference between this method of changing a price schedule and the more usual one in which the product and its appropriate schedule were listed as a revision without the formality of prior withdrawal. In a revision from a minimum schedule, the minimum schedule still remained the permissible low market price regardless of whether any foundry continued to file at that level, and a ten day waiting period was not required should any member wish to lower his price to such minimum. However, if a foundry withdrew its low schedule and filed a higher one, the price schedule was removed from the market as a minimum and any member desiring to quote at the old minimum would have to wait ten days before his price could become effective.

In the second class of withdrawals the withdrawing foundry refiled the item or items either in a later report or not at all. Under withdrawals of this type, a period of time elapsed during which the member had no designated price schedule for the items infolved. During this period he was not supposed to sell or quote such items.

A tabulation was made of the 122 instances of this latter type of

withdrawal. See Table (XI) (I), below. Only withdrawals of schedules have been treated. Withdrawals of price extras, etc., were omitted.

TABLE (XI) (I)
Number of Foundries Filing

GENUINE WITHDRAWALS
BY DIVISIONS AND BY MONTHS

DATE		DIVISIONS								
Year:	Month	1	2	3	4	5	6	7	8	Totals
1933	Dec.						1			1
1934	Jan.		5			4	4	1		14
	Feb.		2	1	1	3	3			10
	Mar.	2			1	3	4	1	4	15
	Apr.	3	1		1	2	2		1	10
	May	1			1	6	3		2	13
	June	2				1	5		1	9
	July	3				3	2		3	11
	Aug.	1			1	6	5		3	16
	Sept.				1	3	2			6
	Oct.				1	1				2
	Nov.					1				1
	Dec.						4			4
1935	Jan.									0
	Feb.						1			1
	Mar.						5	1		6
	Apr.					1	1	1		3
	May									
Totals		12	8	1	6	34	42	4	14	122

It is apparent, first, that the major portion of these withdrawals were filed during the months from January to August, 1934, and, second, that, the foundries in divisions V and VI together filed almost twice as many withdrawals as all of the foundries in the remaining six divisions. The frequency of withdrawals during the first half of 1934 presumably resulted from changes made to conform with the standard classifications specified by the Definitions & Classifications Committee.

The disproportionately large number of withdrawals in divisions 5 and 6 may be explained, in part, by the fact that there were more foundries in these divisions than in the average division. However, allowing for this, there were, on the average, 1.8 withdrawals per foundry in these two divisions for each withdrawal per foundry in the other divisions.

Of the 122 cases in the table above, representing over 1,067 items, three cases lacked data showing the number of items involved; in ten cases the date of the original filing could not be determined, and in eleven cases the withdrawal was effective on the same date as the original filing. The remaining 98 cases represented 888 items. An average of the number of days these schedules were effective prior to withdrawal was calculated. This was found to be 37.4 days.

Thirty-three of these 98 cases, representing 52 items, were with-

drawals of classifications of items not recorded in the third Quarterly Report.

Sixteen cases of the remaining 65 cases included 5 or more items each and represented a total of 769 items.

The remaining 49 cases comprised 67 items.

The use of withdrawals as a means of protecting an established price level has already been mentioned. It remains (a) to show the use of withdrawals for the purpose of removing classifications of items not generally accepted as standard classifications from the published record; (b) to analyze withdrawals from the standpoint of the length of time the schedules were effective before withdrawal and the length of time elapsing before the schedules were refiled; and (c) to consider the price changes affected by the use of the device.

a. Removing Classifications

By the time the third quarterly report was published the classification of products was more uniformly established than in prior reports. For this reason the classification of products as given in the third quarterly report has been chosen for the analysis of those withdrawal cases in which the apparent purpose was to correct discrepancies in the classification of items already filed.

Approximately one-third of the withdrawal cases were withdrawals of classifications and specifications not regarded as standard according to the third quarterly report. For example, the withdrawal of "Drying Car Wheel Castings" by the Ohio Steel Foundry Company eliminated this item from the classification list entirely.

The withdrawal of "Automobile Truck Castings, NOCBN" is (*) especially interesting since "confirmation" of this filing from the foundry was requested by the Society. Eighty days elapsed between the effective date of this filing and its final publication, which was accompanied by a note from the Steel Founders' Society stating that several requests for confirmation had been unanswered by the foundry and that the Society felt it could wait no longer to publish the classifications and schedules. The day following its publication the filing was withdrawn by the foundry. Request for confirmation of filings was apparently not a usual practice, except in cases where grave doubt existed as to the accuracy of the filed data.

b. Effective Period Before Withdrawal.

A total of 848 items were included in schedules which were withdrawn and then refiled at a date later than that of the daily report noting their withdrawal. The average number of days elapsing between the effective dates of the schedules withdrawn and their dates of withdrawal was 37.4 days. Many of these items were combined in only a few cases, so that this average is very heavily weighted by a few cases. If sixteen cases which contained five or more items are removed, the number of items is reduced by 769 leaving 79 items. The average number of days between effective and withdrawal dates for this smaller group of items was twenty-five. About one-fourth of these

(*) The Symbol "NOCBN" means "not otherwise classified by name."

were between one and ten days; another fourth between eleven and twenty-twod days; another fourth between twenty-three and forty-four days; and the others between forty-five and two hundred days.

The average number of days elapsing between the date of withdrawal of schedules and the date of refiling for the smaller group was seventy-seven. On the other hand, the average for the 848 items was thirty-four and a half days.

c. Price Changes Effected by Withdrawals.

Those withdrawals which resulted in a change of the price schedules are of particular interest. Of the seventy-nine items noted above, thirty-eight items or forty-eight per cent represented withdrawals of schedules which were identical with those listed in the quarterly reports. Twenty-nine items or thirty-seven per cent were withdrawals from a lower price schedule than the one listed in the quarterly report. In these cases the refiling was at a higher schedule, the average increase being 2.3 price schedules per item. Twelve items or fifteen per cent were withdrawals from a higher price schedule than the one listed in the quarterly report. The refilings were made at an average decrease of 3.4 price schedules per item.

(1) Lower Price Schedules Withdrawn

The following examples are cases in which foundries filed low schedules and then withdrew them after the price had been effective for a short period, occasionally for only one day. A higher price effective on the withdrawal date or soon thereafter was usually filed concurrently.

Item 1. "Automobile Body Skid Brackets or Posts"

Effective Date	Foundry Number	Action	No. of Report	Date of Report	Price Schedule
9/17/34	625	Filed 9/7/34	209	9/17/34	P
9/17/34	625	Withdrew 9/17/34	210	9/17/34	P
9/17/34	625	Refiled 9/17/34	211	9/18/34	M
9/20/34	Third Quarterly Report (Division 6 only)				M

Schedule P was the first filing for this classification. It may have been that this foundry filed Schedule P, transacted business at the price filed and withdrew the schedule immediately thereafter. This would have the effect of preventing any subsequent filing at the same price from becoming effective prior to the expiration of the ten-day waiting period.

The first filing, filed September 7, effective September 17, was not reported until September 14, while the withdrawal was filed September 17, effective September 17, and reported September 17. The delay in the first instance may have been due to the fact that the definitions and classifications committee of the Code Authority delayed taking action.

Item 2. "Ball (and Rod) Mill Liners."

Effective Date		Price Schedule
3/8/34	Foundry 811 filed (Revision)----------	U
3/21/34	Foundry 811 withdrew ----------	U
3/31/34	First Quarterly Report - all foundries ----	U
6/15/34	Second Quarterly Report - 2 foundries -----	S
	- all others	Q
9/20/34	Third Quarterly Report - Divisions 6 and 8-	S
	- all others	Q
11/26/34	Foundry 811 refiled ----------	S

This item represents a case where schedule U was revised upward - part of the foundries filing (Q) and the others filing (S). Foundry 811 withdrew intil after the price level had become more stabilized.

Item 3. "Buoy Castings - N.O.C.B.N."

Effective Date		Price Schedule
1/25/34	Foundry 410 filed (Revision ----------	R
2/20/34	Foundry 410 withdrew ----------	R
3/31/34	First Quarterly Report - Div.3,7,8 --------	K
	- all others	O
6/15/34	Second Quarterly Report - all divisions filed	K
6/29/34	Foundry 410 refiled by reference to quarterly reports ----------	K

A number of foundries withdrew schedule O and refiled schedule K in the same daily report, revising the price upward in the process.

Item 4. "Dragline Excavator (Walking Type) Castings N.O.C.B.N."

Effective Date		Price Schedule
5/2/34	Foundry 612 filed (Revision) ----------	S
6/15/34	Second Quarterly Report - all foundries ---	S
8/14/34	Foundry 612 withdrew ---------- ---	S
8/17/34	Foundry 612 filed; (less than 25#, N.Q.D. 24 pcs. ----------	R
	(over 25#, N.Q.D.24 pcs.	P
9/20/34	Third Quarterly Report Div.1: 1-100# - I; over 100# - H	
	Div. 5: 1-25# - R; over 25# P-N.Q.D.24 pcs.	
	Div.6: ----------	S
	Div.8: 1-100# - K; 100# - J	

It appears that Foundry 612 filed schedules in order to match higher competitive prices in Division 5.

Item 5.

Effective Date		Price Schedule
12/28/33	Foundry 511 filed ----------	O
1/3/34	Foundry 511 withdrew ----------	O
3/31/34	First (and all subsequent)quarterly reports	M
4/9/34	Foundry 511 refiled ----------	M

Whether a low price was filed for a few days to secure certain business, and then withdrawn, or whether revision was to match higher prices by others, is not clear.

Item 6. "Elevator Castings for Buildings.N.O.C.B.N."

Effective Date		Price Schedule
3/19/34	Foundry 116 filed (Revision) ----------	O
3/28/34	Foundry 116 withdrew ----------	O
3/31/34	First Quarterly Report Foundry 116 and Foundry 111, (O) all others No record of refiling by F. 116	N
3/23/34	Foundry 111 filed (revision) ----------	O
4/3/34	Foundry 111 withdrew ----------	O
3/31/34	First Quarterly Report - Foundry 116 & 111, (O) all others ----------	N
7/7/34	Foundry refiled by reference to second quarterly report ----------	N

These two foundries filed and later withdrew schedules which were lower than those filed by other members of the industry.

Item 7. Gears - Cast Tooth and Blank 1 to 250#; 250# & over

Effective Date		
3/31/34	First Quarterly Report all foundries -------	M/C
4/11/34	Foundry 105 filed (Revision) ----------	N/P
4/23/34	Foundry 105 withdrew ----------	N/P
7/3/34	Foundry 105 filed by reference to 2nd Q.R.--	M/C

This is another example of prices being lowered and almost immediately revised upward by the method of withdrawing schedules to protect the market.

These seven examples illustrate the withdrawal of price schedules from a lower bracket and the eventual refiling of higher ones. Generalization is difficult and the actual motives prompting withdrawal in the various cases cannot be ascertained. However, when the industry wished to raise the price of some product, withdrawal of the lower schedule was the practice resorted to. When the last foundry had withdrawn the schedule,

it could no longer function as a minimum price. When a foundry filed a price lower than the minimum for the purpose of obtaining special jobs, the immediate withdrawal of such schedules protected the market by making lower schedules filed by other foundries ineffective until the expiration of the ten-day waiting period.

(2). Higher Price Schedule Withdrawn.

The following examples are cases of lower prices being substituted for higher ones. The usual expedient would be merely to refile at lower schedules. In these cases higher schedules were withdrawn prior to filing lower schedules.

Item 1. "Automobile Transmission Shift Forks."

Effective Date		Price Schedule
12/26/33	Foundry 207 filed ----------	J
1/13/34	Foundry 207 withdrew ----------	J
3/31/34	First Quarterly Report ----------	K
6/15/34	Second Quarterly Report ----------	K
7/14/34	Foundry 207 refiled by reference to second quarterly report ----------	K

This appears to be a case in which the price was reduced to the level established by other member of the industry.

Item 2. "Boiler and Tank Castings (Not subject to Pressure) N.C.C.B.N.

Effective Date		Price Schedule
2/17/34	Foundry 507 filed ----------	K
3/29/34	Foundry 507 withdrew ----------	K
3/31/34/	First Quarterly Report ----------	M
6/15/34	Second Quarterly Report ----------	M
7/3/34	Foundry 507 refiled by daily report --	M

Item 3. "Lock and Dam Castings N.C.C.B.N."

Effective Date		Price Schedule
3/26/34	Foundry 418 Filed ----------	
	(less than 50# ------	N
	(over 50# ----------	Q
3/31/34	First Quarterly Report ----------	O
4/4/34	Foundry 418 withdrew ----------	
	(less than 50# ------	N
	(over 50# ----------	Q
4/10/34	Foundry 418 refiled by daily report (no weight class)	O

This case illustrates the withdrawal of weight differentials and refiling of a single classification in accordance with the practice of

other members of the industry,

These are typical illustrations of withdrawals for the purpose of lowering the price schedule. It appears that the filing foundry misjudged the market level and filed a higher price than other members of the industry, and was forced to reduce it to meet competition.

c. Withdrawal of Identical Price Schedule

(3). A Sample Case of a Large Number of Items Withdrawn

The discussion of withdrawals would be incomplete without examining at least one case in which a large number of items were iw withdrawn. Perhaps the most interesting of this group involoved Foundry 705, Duhcan Foundry and Machine Works,-which was one of the smallest foundries in the industry. The chronological history of their filings and withdrawals is as follows:

Effective Date	Foundry Number	
3/16/34	705	filed 15 items (Revision)
3/26/34	705	filed 97 items (New Low Schedules)
3/27/34	705	withdrew 112 items (Those listed above)
3/26/34	705	filed record of sales contract with one customer for two items, for one year
4/18/34	705	filed 108 items (New Low Schedules)
4/16/35	705	withdrew 108 items
4/18/35	705	filed record of 3 months' contract with one customer, 55 items

Any explanation of the basis for these moves by the Duncan Foundry is necessarily based on conjecture. It is, however, plausible to assume that this concern found it desirable to offer a price differential to its customers. Under the terms of Commercial Resolution #38, a member could continue to sell his product under the terms of a binding contract, even though the contract price was lower that his effective filed price. It appears that the Duncan Foundry took advantage of this method of selling their castings, since, in the case of the first withdrawal they seem to have made their sale at the filed price and then made a contract for two other items when their prices were withdrawing, in the case of the second withdrawal, they withdrew their filed prices before they became effective and negotiated a contract for the same items instead. (*)

(*) The 55 items mentioned in the contract probably refer to the same items on which price schedules, were filed. In the Price Report practically every item was given two schedules,- one for a small number of pieces and one for a large number of pieces. This explains how a contract for 55 items could include approximately
/112 filed items.

In this way the low prices quoted by the Duncan Foundry were prevented from becoming effective and disturbing the market. Also the Duncan Foundry was able to establish a price differential suitable to its needs without influencing or being influenced by the prices maintained by other members of the industry.

2. Purposes of Withdrawals

The objects for which the withdrawal of price schedules appear principally to have been employed may be summarized as follows:

a. To remove from the published price record those classifications of items not accepted or approved by the Definitions and Classifications Committee.

b. To remove from the record a price that appeared too high in comparison with prices filed by other members of the Industry.

c. To remove from the record those prices which were believed to be too low in comparison with prices filed by other members of the industry.

d. To remove a specific minimum schedule from the published prices so that a waiting period would be necessary before that schedule could again be quoted.

Further statictical analysis of the sample cases presented in the table above adds certain results which, together with those given in connection with the table, may be summarized as follows:

a. There were 122 cases of wothdrawals, excluding those for which other schedules were refiled in the same report. Divisions 5 and 6 filed more than an average number of withdrawals.

b. The great majority of cases were withdrawals of less than five items.

c. Approximately one-third of the withdrawals were for the purpose of removing unapproved classifications from the published price record.

d. Of the remainder, 16 cases included five or more items and represented a total of 769 items.

e. Analysis of this special sample shows that nearly one-half of the items were withdrawn at the same schedule (price level) as that recorded for the item in the quarterly report. About one-third were withdrawn from a lower schedule than given in the quarterly report, and the remainder from a higher schedule than there shown.

f. In the cases where items were withdrawn from a lower price schedule and refiled at a higher schedule, the average rise (or increase) was found to be 2.3 price schedules per item. For the items withdrawn from a higher schedule and a refiled at a lower one the average decrease was 3.4 price schedules per item.

g. The items which were withdrawn from the same schedule as that given in the quarterly report appear in all cases to have been refiled later at the same schedules, the reasons for such a manoeuvre not being apparent.

II. ANALYSIS OF FILINGS RELATING TO DISCOUNTS AND ALLOWANCES.

A. Discounts to Other Foundries (Middlemen)

The Society required that all discounts to middlemen be filed. These were then published in the daily price reports. The three discount rates most commonly filed during the Code were (1) 5 per cent, (2) 7½ per cent, and (3) "not over 10 per cent". These were granted with the stipulation that the product was not to be resold at less than the filed price. Exhibit I - Table X-A shows the type of discount filed for each foundry, the recipient, and the effective date. Exhibit I - Table X-B shows the frequency of each type of discount filed during the Code, listed by months.

The few discounts reported by the Agency before March, 1934, were all fairly high, some reaching 20 per cent. Beginning with March and April, 1934, when the Agency formally required publicity, discounts fell to the 5, 7½ and 10 per cent referred to above. There is a record of 120 filings distributed as shown in the table.

It seemed to be the practice of foundries to grant reciprocal discounts to each other. An example of this is shown in the table (Exhibit I - X-A) opposite Report No. 102; foundries Nos. 202, 201, 207 and 208 evidently participated in such an agreement. It probably was a case of one mill distributing another's Rolling Mill Castings, with the latter reciprocating by handling the former's Freight Car Castings.

B. Allowances of Freight Charges to Railroads

The daily price reports issued prior to July 6, 1934, include 71 statements made by foundries concerning freight allowances to purchasers of railroad castings. Some of the foundries allowed freight to railroad companies to the nearest point on the line; others absorbed freight to destination. There were approximately ten different provisos representing different allowances to railroads. In most cases, members allowed complete freight charges to destination on railraod castings, whether for new equipment or repairs. Many, however, set the western boundary as longitude 105, (the meridian through Denver, Colorado). Exhibit I Tables XI-A and B show the statistical distribution of these allowances.

The general practice before the Code was the allowance of full freight to Railroads. It has been alleged that this practice was occasionally abused by the purchasers - there were instances of the railroad requesting delivery of casting at a point far distant from the foundry, requiring long hauls over the lines of the purchaser. (*) In the case of an unusually long haul, the freight charges sometimes destroyed the profit margin on the sale. When the Code became effective, it was suggested that the limit on freight allowance to railroads be the point on the line nearest to the foundry. This suggestion was not always complied with, possibly because of pressure brought

(*) J. N. Anderson - Code History, page 159

to bear by the railroads. (*) Statements were made by members to the effect that railroads threatened to take away from foundries not allowing freight, certain important patterns owned by the railroads. Rather than lose the patterns and business, foundries often allowed full freight. (See filings compiled on Exhibit I-Table XI-A).

In October 1934, the Committee of the Society studying transportation problems recommended that, on sales to railroads, freight charges to the nearest point on the line and an allowance of 5 mills per ton-mile over the railroad's lines be allowed. This proposal evidently met with the approval of the interested foundries and was adopted by the Society as a Commercial Resolution in December, 1934. However, as far as can be learned, it was never approved by the Administration. This practice was never fully standardized, although practically all foundries filed their allowances accordingly, and it is generally supposed that competitive bids included nearly uniform freight allowances.

C. Allowances to Customers on Patterns and Equipment

There were 233 instances of filing on Patterns - their distribution by company and by month is compiled in Exhibit I - Tables XII A and B. Nearly all of the filings during the early months of 1934 were of the following types:

> "When a new pattern is required and when 500 or more miscellaneous Railroad castings are bought at one time, we will absorb pattern cost, pattern to remain our property." and, (*)
>
> "When a new pattern is required and less than 500 miscellaneous Railroad castings are bought at one time, we will make an extra charge to the customer at not less than cost." (**)

Altogether, there were 123 such filings recorded on the daily price reports. However, beginning in March, 1934, and continuing through August, 80 foundries filed statements, almost all identical as to wording, to the effect that,

> "We hereby file with your office the stipulation where any pattern is in existence and owned by a competing company we will, to meet competition, likewise furnish a pattern from which to make castings for a customer without any charge we to be the judge as to when the pattern is to be made and the condition, pattern to remain our property." (***)

The other types of filing were relatively unimportant, with the exception of one instance in which the 17 foundries filing reserved the right to equalize pattern transportation charges to meet competition.

(*) Statements of Industry members - interview December 22, 1935.

(**) Steel Founders' Society - Daily Price Reports

(***) Ibid

(****) Ibid

It is interesting to observe the degree of leadership revealed by these filings. In Report No. 14, January 4, 1934, two foundries, the Buckeye Steel Castings Company and the Ohio Steel Foundry Company, Foundries Nos. 516 and 517, respectively, both large producers, filed clauses of the type first referred to above. Within 30 days, more than 100 foundries had filed statements almost identical in wording. In the case of the second clause quoted, the Crucible Steel Castings Company, No. 509, filed first and was followed within 30 days by approximately 50 foundries.

Pursuant to an amendment to the Code, effective September 3, 1934, (*) it was no longer permissible for foundries to furnish pattern equipment, or alterations thereof, at less than actual cost of production; except that, in the case of Miscellaneous Railway Car Castings, it was not a violation for a foundry to absorb the cost of patterns when castings were ordered in quantities of 500 or more from one pattern at one time. Patterns, in this case, were to be the property of the foundry.

The amendment had the effect of eliminating all other provisions and allowances on patterns with the possible exception of the absorption of pattern transportation costs to meet competition. There is no indication that this allowance was discontinued. The fact that with little exception, allowances on patterns to Railway Car Builders were allowed to stand, is another indication of the pressure brought to bear by these large purchasing interests.

III. ANALYSIS OF THE FILING RELATING TO "PRICE EXTRAS."

The steps taken to stabilize another element of the price structure, price extras, will now be considered.

The Agency defined the filing of letter schedules as relating to "rough unfinished, unmachined miscellaneous carbon steel castings, either unannealed, annealed or normalized, but not including cost of pattern equipment, machining, carbon and alloy additions or other extras." The practice of adding the various "extras" to the schedule prices before the Code was not clearly defined. Available records show varying extras. During the Code the price extras filed, after the "call" for their filing, were practically identical and uniform.

A. Description of Price Extra Practice.

During the Code Period eight different types of price extras were filed upon: Carbon extras; Alloy extras, (such as nickel, chromuim, manganese, molybdenum, vanadium, copper, tungsten and titanium); extras for Hardness and Tension Specifications; Special Test extras for carbon and alloy castings; extras for Maching and/or Drilling Bolster Center Filler Castings for Grades A or B and High Tensile Steel; and extras for Radiographic Examinations and X-Ray Inspections.

The first price extra filing was made by the Otis Elevator Company of Buffalo, New York, on January 26, 1934. At this time it filed alloy extras for nickel and nickel chrome steels, molybdenum, chronium, vanaduim, manganese

---

(*) Amendment 2, Codes of Fair Competition, Volume IV, P. 451.

and molybdenum steels, and mild manganese steels. The next extra filing was submitted by the Birdsboro Steel Foundry and Machine Company of Pennsylvania. On March 5, 1934, it filed extras for Carbons, Alloy steels such as chronium, nickel, manganese, molybdenum, vanadium, copper and tungsten, Hardness and Tension Specifications and Special Tests for carbon and alloy castings. Following the release of the Birdsboro price extra list in Report #61, many members of the industry filed extras "same as" the Birdsboro Company, and filed each revision or addition as Birdsboro did. In Report #74 the latter company added Titanium alloy extra and other companies immediately followed. Commercial Resolution #29, adopted June 13, 1934, issued a formal call for the filing of price extras by members of the industry. More than six months before a notice had appeared in Report #3, dated December 19, 1933, which stated, "The filing of extras to cover alloy additions, etc., is not required at this time under the call for the filing of prices during the period ending December 21, 1933." However, even though not required, extras had been filed prior to the adoption of the Resolution.

B. Methods of Filing Price Extra Schedules

As in the case of filing price schedules, there were three general methods of filing price extras, namely, by referring directly to the type of extras and giving the cost of each item, by filing "same as" some other foundry, and by referring to a quarterly report. "Same as" filing was most common, and usually referred to the filing of Foundry No. 105, the Birdsboro Company. Perhaps this may be related to the fact that the chairman of the Extras Committee of the Code Authority was an official of the Birdsboro Company. As far as can be learned from study of the daily price reports and subsequent compilations, there was little or no disagreement with the Birdsboro "Extras" - they became the established levels, were published in the quarterly reports and adopted, almost without exception, by every interested foundry. Inspection of "Extras" as filed by the Birdsboro would be representative of all filings.

This foundry issued 6 filings during the Code. The first and second have already been described. The third extra filing, which was submitted in Daily Report #144, reported increases for chrome, nickel, vanadium and copper in Alloy Steel castings. The next extra filing was made in Daily Report #225, it included the extra filings as submitted in Daily Report #144 and also extras for the U. S. Navy Specifications group and Radiographic examinations. The fourth filing was a withdrawal of the U. S. Navy Specification group. The final filing by the Birdsboro Company, in Report #333, dated March 15, 1935, was for Machining and/or Drilling Bolster Center Filler castings of High Tensile Steel.

In each case, the lead of the Birdsboro Company was widely followed.

Approximately 330 price extra filings were submitted to the Agency, 15 per cent of which were filed before the official "call," June 13, 1934 by about 75 per cent of the foundries. It is believed that other members adopted the Extras published in the quarterly reports and did not refer to them specifically.

IV. ANALYSIS OF FILINGS RELATING TO SALES CONTRACTS

Commercial Resolution No. 6, adopted November 27, 1933, required members of the Industry to file sales contracts which they had made before December 11, 1933, which continued in effect after December 31, 1933. These contracts were to have been filed concurrently with the first filing of prices, December 11 to December 21.

The "Call" required that the foundry file information giving the effective and expiration date, name of customer, the class or classes of castings and the price specified. These contracts, if any were filed, were not reported in the daily price reports.

The minutes of an Industry meeting held in Cincinnati, Ohio, on October 9 and 10, 1934, reported to the members in the form of a letter October 24, 1934, are quoted in parts:

> "It was stated that some contracts are in effect between certain foundries and their customers embracing prices lower than those currently on file by these foundries. While these contracts were made at prices actually on file at the time they were consummated, it was pointed out that unless the terms of these contracts are filed and published to the Industry, the Industry is misled into believing that a higher revised price is the prevailing minimum price at which the castings of the classes in question are currently being sold. The Board of Directors on advice of Counsel later adopted a resolution to rectify this situation." (*)

The following section of Commercial Resolution #33 required the filing of all unfilled contracts, wherein deliveries were to be made at prices lower than current filed prices.

Commercial Resolution #33:

> "RESOLVED, that in cases where a member of the Industry desired to file prices for current new business which are higher than the prices at which a purchaser is entitled to recieve deliveries under an unexpired contract or contracts, such member is hereby required to file with the Society the following particulars relating to each such contract:
>
> 1. Name of purchaser
> 2. Date contract became effective
> 3. Expiration date of contract, or the provisions as to duration, termination or cancellation
> 4. Classification names of castings involved
> 5. Prices applying to each classification
> 6. Such further information as the executive officers of the Society may request
>
> "and further
>
> "RESOLVED, that the foregoing particulars as to such contracts

(*) Steel Founders' Society - Transcript of Proceedings, Industry Meeting, October 24, 1934.

shall be given the same circulation among members of the Industry as all other price data, provided, however, that the names of the purchasers under such contracts shall not be disclosed without the consent, in writing, of the members filing the contracts."

Exhibit I - Tables XIII A, B and C (Based on the daily price reports issued by the Agency) reveal that under this resolution, during a period of six and one-half months, 22 members of the Society filed 60 contracts covering periods ranging from 2 months to 1 year. Many of the agreements as filed showed neigher effective date nor date of expiration, making it difficult to compute the average length of the contracts filed.

Contract prices were filed only in a few scattered cases. 48 per cent of the total number of contract filings were made during the 10 days following the formal "call", and more than 36 per cent were filed during November and December, making a total of almost 85 per cent within 2 1/3 months.

The companies situated in Divisions V and VI submitted the greatest number of filings. These divisions correspond to the Chicago, Cleveland and Minneapolis Federal Reserve Districts. Foundries in Division V filed 20 per cent of the contracts, while those in No. VI filed more than 70 per cent. Contracts were filed on almost 50 different products, most of which were Road and Street Machinery Gear Castings and various types of automotive castings. There were two other products for which filings were made; Agricultural Machinery and Overhead Travelling Crane.

Foundry No. 705, the Duncan Foundry and Machine Works, Alton, Illinois, filed a contract granting low prices on 55 different heavy type products to one customer, covering, for the most part, various products under the Crane, Overhead Travelling and Charging Machine classification, and including such products as Foundry Equipment, Elevator, Paper Mill and Platform Truck and Trailer Castings. This contract was in effect for 3 months, terminating July 17, 1935. The Deemer Steel Casting Company of New Castle, Pennsylvania, filed a blanket contract on Rubber Machinery. This contract covered almost 100 products of this major classification, and although the effective date was not specified, it terminated March 31, 1935. The Reed Foundry and Machine Company of Kalamazoo, Michigan, filed the greatest number of contracts, submitting 13 filings covering 20 customers and affecting 23 products.

This Sales contract device seemed to be used as a means of protecting the prevailing minimum price level. A foundry desiring to file or quote at levels much below the prevailing ones was evidently forced into a contractual relationship with its customer. The case of the Duncan Foundry and Machine Works is an example of this. In general, companies using the sales contract device were small concerns which may have been able to compete only on the basis of a price differential. Commercial Resolution #38 granted foundries the privilege of closing contracts at prices lower than the minimum on file, provided such contracts were reported to the Agency.

(*) See Exhibit I - Table XIII -C.

CHAPTER VI

STATISTICAL ANALYSIS OF PRICES UNDER THE OPEN PRICE PLAN

Turning from a general examination of the degree to which the elaborate price-filing system set up in this industry under its code was accompanied by uniformity in pricing practices, an attempt will be made in this chapter to appraise its actual effect on prices.

I. SUBJECT MATTER AND METHOD OF STUDY EMPLOYED

A. Sample of Products Selected for Study

When this study was planned, it was decided to center the statistical analyses around a sample of products, large, medium and small castings, which it was felt would give a better and more usable basis for appraising the effect of the system on price levels, their flexibilities and their uniformity, than would a more extensive survey of a great number of products. The procedure was outlined briefly to the manager of the Steel Founders' Society with the request that approximately five products, including heavy, medium and light-weight castings, be suggested, together with the names of five representative producers of castings of each weight class - the foundries to be typical large, medium and small producers of the particular class produced. The Society responded by sending a list of products, included below, which were used in the analysis.

A few additional products were selected on the basis of other factors, such as completeness of filing. The products, arranged in the order in which they will be discussed are:

1. Aeronautical Castings
2. Agricultural Machinery - Combine Harvester
3. Automobile Brake Clutch Pedal
4. Automobile Axle Housings
5. Automobile Brake Drums
6. Bread Slicing Machinery
7. Cylinders - Hydraulic Accumulator
8. Dredge Ball & Socket Joint Castings
9. Electrical Machinery & Equipment
10. Gears - Cast Tooth & Blank
11. Heat Treating Furnace & Equipment Carbonizing and Carburizing Boxes
12. Railroad Locomotive Driving Boxes (Friction Type)
13. Refinery Oil Castings - Sectional "U" Bend Only
14. Refractory & Brickyard Roller Tires
15. Rolling Mill & Steel Plant - Roll Housings & Caps (MQD over 2,499)
16. Power Shovel & Dragline Bases - Upper
17. Shoes and Treads
18. Valve Bodies

These castings are practically all parts of equipment manufactured by other industries - for instance, automobile-axle housings used in the automobile industry, agricultural machinery combine harvester castings, used

in the manufacture of mechanical harvester, power shovel bases used in the construction of power shovels, etc., as their names often imply. They are considered to be standardized products - they are not controlled by or under patents, so far as is known. All are included in the "Miscellaneous" products group - the only products for which prices were filed.

B. Method of Analysis

Tabulations have been prepared of the filings for each of these products, based upon the daily price reports published by the Code Authority. Three of these tabulations - those for Aeronautical Castings, Locomotive Driving Boxes, and Power Shovel Shoes and treads - are reproduced in the Exhibit I of this appendix. The tabulations for the remaining products studied show similar results, and their inclusion in detail was not considered necessary.

In the following pages summaries have been prepared for each of the specimen products, based upon the tabulations, and designed to show the degree of uniformity of the prices filed, the extent and sequence of price changes, the influence of leadership, geographical differentials, flexibility of the price structure, and other factors which may appear as indicative of the influence of the filing plan. The minimum prevailing schedules published in the Society's quarterly reports will also be shown at approximately quarterly intervals, to indicate and accentuate more clearly the various movements away from the mean or prevailing price levels. Where available from the daily price reports, the status of each schedule filed will be indicated (L, H, DL, DN, etc. - See Chapter III, F,1. Daily Price Reports)

During the code, 165 foundries filed "blanket filings", quoting and referring to all schedules contained in a quarterly report. There is no way of determining which specific classification these were designed to cover, consequently it has been necessary to neglect these filings in the following analysis.

II. ANALYSIS OF THE TABULATIONS OF PRICE FILINGS

A. By Individual Product

In the following sub-sections the data contained in the tabulations prepared for each of the 18 products listed above are analyzed and summarized.

1. Aeronautical Castings, N.O.C.B.N.

The first recorded filing on this classification was made by Foundry 504, the Atlantic Foundry Company, on December 18,1933 (see Exhibit I, Table XV). The schedule placed on file was "C", one of the highest prices filed for a product class. This is somewhat accounted for by the fact that this class of casting is usually very small and more expensive to cast than the larger ones.

There were two distinct cases of following the leader in the filing on this product. On March 26, 1934, Foundries Nos. 832, 812, 801, 823, and 815 filed "same as" schedules. On August 23, Foundry 622 also filed C. This was followed by "same as" filing by 22 companies, all in Division VI. There were 55 filings in all recorded with the Agency.

The only other than C filed for this product during the entire code Period was by Foundry 303 on April 18, 1934. This schedule showed an increase in price, to Schedule B. Later, on July 4, this foundry went back to the C schedule.

It is apparent that prices were entirely uniform on these castings. With the one exception, referred to above, the levels remained unchanged.

2. Agricultural Machinery - Combine Harvester Castings, N.O.C.B.N.

In the report of December 5, 1933, published by the Steel Founders' Society of America, this classification was listed as M. Subsequent filings were at lower prices. It is therefore assumed that "M" was considered too high a level, since it was never filed subsequently. The first filing to be recorded on the daily price reports was by Foundry 608, Clark Equipment Company, at Schedule P. On March 26,1934, five foundries in Division VIII filed J and K for over and under 100 lb. castings, both above the low schedule P. Foundry 835 met this new schedule on April 7, 1934. However, most of the filings were on Schedule N. The general adoption of this level is indicated by the fact that, on June 16 of the same year, the Second Quarterly Report listed the schedule as N. The schedule listed in the First Quarterly Report had been P.

On August 23 Foundry No. 622 filed a set of schedules, new "lows", effective Sept. 4, 1934. This was followed by "same as" filing on the part of 18 foundries and the filing by one other foundry of schedules which referred specifically to the item. The Third, Fourth and Fifth Quarterly reports indicated this last schedule as the prevailing minimum in Division VI. In all other divisions it remained N.

The following may be considered as summarizing the filings:

(1) The tendency was to establish price differentials according to geographical divisions.
   a. Levels in Division VIII (California) were highest.
   b. Levels in Division VI were lowest.
   c. Levels in other divisions varied between P and N, with N prevailing.

(2) Foundries in Divisions VI and VIII did most of the filing and levels were quickly established by the practice of "following the leader." This may be traced to the fact that Division VI was the largest producer of Agricultural Machinery, with Division VIII also a fairly large producer. The high prices in the latter division were due to the fact that competition was localized; long distance delivery costs prevented foundries located in other divisions from selling their products at lower prices.

(3) Most of this product, especially during the last half of the Code Period, was sold at uniform prices. In Division VI this was especially noticeable.

(4) Prices in the Industry went down from M to P, then up to N and then down to O, P, Q, R, and S, as established in Division VI.

(5) Price changes were not met during the waiting period.

3. Automobile - Axle Housings (Banjo Type)

An examination of data with reference to this product reveals that:

(1) the method of quoting as to size, weight, etc. was not uniform during the early days of the Code;

(2) it tended to become uniform as time passed;

(3) the original filing, indicated in the December 5 Report as O, was undoubtedly considered too low in all divisions except No.5, since higher price schedules were filed from the start;

(4) lower prices were usually withdrawn before filing higher levels;

(5) the most usual levels were K for Housings over 30 inches in length and P for those under 30 inches;

(6) Foundry 608, the Clark Equipment Company, one of the smallest firms in the Industry, tended to be the low and most frequent filer, accounting for all three of the instances in which a low was filed and a waiting period required; (There is no indication that other foundries paid much attention to the low filing of this small company.)

(7) in this product, as in other products, Foundry No. 622, the Milwaukee Steel Foundry Company, on August 23, 1934, made a filing of K and P, (over and under 30 inches in length) which was filed "same as" by 24 foundries in Division VI. Foundry 608, referred to above, fell in line with the others, filing "same as" Foundry 622;

(8) the prevailing levels according to the quarterly reports were K and P, except in Division VIII in which it was E, a considerably higher price level;

(9) the plan resulted in uniformity of method of filing and of schedule filed;

(10) the uniformity was most complete in Division VI, where the production of this product is concentrated.

4. Automobile Brake Clutch Pedal and Similar Levers (with Foot Pads)

An investigation of price schedules filed for this product revealed the following:

(1) the original filing, Schedule E on a new classification, was made by Foundry No. 625*on March 14, 1934, effective after the waiting period, March 24, 1934.

* Note: The first number in the foundry number indicates the location (Division), i.e., Foundry No. 625 is in Division VI.

(2) Schedule B was filed by all interested concerns, except Foundries 130, 109 and 112, 505 and 709 which filed Schedule I, considerably lower.

(3) On August 23, 1934, Foundry 622 filed B, followed by 25 foundries in Division VI.

(4) On October 5, Foundry 622 again filed Schedule B, followed by 7 foundries all from Division VI - this established the level of "B" at least in Division VI, the center of production.

(5) The quarterly reports list the prevailing minimum schedules for all divisions as "B".

(6) This is an instance where, with slight exception, the level was uniform from the time of the first filing.

5. Automobile Brake Drums - 1 to 100 lbs.

For this product, Schedule I, filed originally before the December 5 Report, was the established level throughout the Code Period in all divisions. Four foundries in Division VIII had filed Schedule K on March 20, 1934, but in a matter of days most of them were back up to I. One other foundry, No. 714, filed K on December 4, 1934 - all others were I.

Foundry 622, which filed I on August 23, 1934, was followed by 25 foundries in Division VI which filed "same as". This concerted action was responsible for the establishment of uniform prices on most automobile castings.

6. Bread Slicing Machinery Castings, N.O.C.D.N.

This product was originally filed as a new classification by Foundry No. 709 on September 26, 1934, effective October 6. The schedule was K. During the Code it was filed by only two other foundries, Nos. 641 and 505, both as Schedule K.

7. Cylinders - Hydraulic Accumulator Type

The early report issued by the Industry on December 5 listed this casting on Schedule G, where it remained throughout the life of the Code. No foundry filed any other schedule - there were 48 filings at "G", including the foundries in Division VIII, which in this instance did not file higher than foundries in other divisions.

The usual concerted action by foundries in Division VI followed the filing of Foundry 622 on August 23, 1934.

8. Dredge Ball and Socket Joint Castings, Including Cases, Balls, and Glands

An investigation of the various filings revealed that until May 23, 1935, the prevailing level in this classification in all divisions except the California district was Schedule L, which was the level included in

the Report of December 5, 1933. Foundries in Division VIII quoted J and K, respectively, on castings over and under 100 lbs. in weight. Following the filing of "L" by Foundry 622 on August 23, 1934, 25 foundries in Division VI filed "same as," the usual procedure.

On May 13, 1935, effective May 23, Foundry 205 filed Schedules P and O (over and under 1,000 lbs.), new low or minimum schedules. During the 10-day waiting period 6 foundries filed to meet the new low schedules and four days after the new prices were effective another foundry filed. Whether this activity disturbed the prevailing "L" level is not definitely known, since it occurred near the end of the Code Period.

9. Electrical Machinery and Equipment - Motor Frame (Box Type)

The filing in the early days of the Code was not uniform, although most foundries quoted on both over and under 500 lb. castings. The most usual filing quoted Schedule K on both, with the exception of foundries in Division V, which filed Schedule J on castings under 500 lbs. and a number of foundries in Division VIII which filed I and J (higher prices). Most of the filings made in the interim between the First and Second Quarterly Reports listed K and J for the two weight groups. These were levels published in the latter report. However, on August 23, 1934, Foundry 622 quoted K for both weights. This was, as usual, followed by 25 "same as" filings, which definitely set the level as K in Division VI. Subsequent filings in Division II established the same levels in that Division.

10. Gears - Cast Tooth and Blank

The original filings as published in the Report of December 5, 1933, were Schedules O and M on castings over and under 250 lbs., respectively. During the Code, filings were made on Ring Gears as such, and a composite filing for all other types of gears. The schedule most often filed on Ring Gears was L, although later in the Code Period (about August, 1934), a number of foundries listed N and L for Rings over and under 250 lbs.

The filing on other types of Gears was not uniform during the early months of the Code. Schedules L, O and P on over 250 lbs. and M, N and occasionally O on castings under 250 lbs. were most consistently used. The prevailing levels about April 1, 1934, were:

(1) over 250 lbs., Divisions II, V and VI - P;
all others, O;

(2) under 250 lbs., Divisions III and IV - M;
all others, N.

On March 21, 1934, low schedules, O and M, were filed by Foundries 407, 424 and 420, effective March 31. Why the waiting period was required is not clear, because the same schedules were being used by other foundries. The day following this filing (March 22, 1934), Foundry No. 419 filed the same schedules (O and M), which were allowed to become

effective immediately. There were two other instances of filing O and M during the waiting period, prices becoming effective on the same day.

Fifteen foundries filed "same as" the original filing of Foundries 407, 424 and 420, some effective before and others after the original filing. In the interim between the dates of publication of the First and Second Quarterly Reports, most of the filings became Schedules O and M, although several foundries in Division VIII quoted higher schedules, H and I, for castings over and under 100 lbs. Most of the filings during the first half of the Code Period added N.Q.D. - R.M.O. (no quantity discount to Rolling Mills).

On August 23 and 25, 1934, Foundry 622 filed O and M on Gears - Cast Tooth and Blank, and N and L on Ring Gears; this was followed by the usual 25 "same as" filings by members in Division VI. During the last half of 1934, prices of this product appear to have been uniform.

11. Heat Treating Furnace and Equipment, Carbonizing and Carburizing Boxes

Although Schedule K was listed as the prevailing level for this product in the Report of December 5, 1933, no foundry filed it during the first few months of the Code. Schedules M and N (over and under 500 lbs.) and L were most consistently quoted. Six foundries in Division VIII quoted H and I for the weights over and under 100 lbs. On April 23, 1934, Foundry N. 416 filed K; this was followed by similar filings by a number of foundries.

On July 10 of the same year, Foundry 63 filed Schedule M, effective ten days later, on July 20. This was evidently considered a new low although it had previously been filed and there is no evidence of a withdrawal. Foundry 622 filed M on August 23, 1934, followed by the usual "same as" filing on part of 25 foundries. This fixed M as the prevailing level in Division VI.

The First Quarterly Report, published March 31, 1934, listed the prevailing schedules as follows: over 500 lbs. -Divisions IV, V and VIII = M, all others, K; under 500 lbs., Divisions IV, V and VIII = N, all others, K. The Second Quarterly report listed K for all divisions. In August the levels were established as M in Divisions I, II, V and VI, and K in Divisions III, IV, VII and VIII. This differential prevailed during the remainder of the Code Period. In Division VI, especially, these schedules were uniformly quoted.

12. Railroad Locomotive - Driving Boxes (Friction Type)

The study of prices for this class of casting revealed an interesting manipulation of prices within a schedule by use of the N.Q.D. (No Quantity Discount) principle. Examination of Exhibit I - Table XVI shows that the schedule published in the Industry Report of December 5, 1933, was P with N.Q.D. - this status made operative only the prices under the 1 to 3 piece column of the schedule, with no reduction in price for any quantity on order. The first record of any filing was on December 30, 1933, when Foundry 402, American Steel Foundries

Company, filed. On March 2, 1934, a foundry in Division VIII filed schedule P with the N.Q.D. moved cut to 99 pieces. This was soon followed by other members of Division VIII and constituted in effect a price reduction(*) as reference to the actual schedule will indicate. During the next six months many foundries in other divisions also filed "P" with N.Q.D. over 99 pieces. On October 29, 1934, Foundries 407, 105 and 422 filed jointly, effective November 8, Schedule P with N.Q.D. over 249 pieces - a new low price.

When the Fourth Quarterly Report was published, December 13, 1934, the above schedule and N.Q.D. over 249 pieces was the prevailing level in all divisions except No. VIII. On January 2, 1935, Foundries 805 and 806 jointly filed the new level (N.Q.D. over 249 pieces). Five other foundries in Division VIII followed with "same as" filings. The Fifth Quarterly Report, issued on March 23, 1935, indicated complete uniformity in all divisions at the new level.

13. Refinery Oil Castings - Sectional "U" Bend Only

The Report of December 5, 1933, and the very early filings by members specified Schedule L and made no differential for weight classes. However, Foundry No. 206 filed on February 28, 1934, effective March 10, low schedules L and H (over and under 100 lbs.). Shortly after this, effective March 17, Foundry 626 filed low schedules H and N. About that time several foundries in Division VIII filed the higher levels, H and I. However, the prevailing level was L, indicated in the First Quarterly Report and again in the Second. The L and H schedules were, however, filed consistently during July and August of that year.

On August 25, 1934, Foundry 622 filed "L" for all weight classifications. Again the same 25 foundries followed this filing establishing the prevailing level as "L" for Division VI. The differentials prevailing during the remainder of the Code Period after August, 1934, were as follows:

Castings over 100 lbs. - Schedule L, all divisions

Castings under 100 lbs. - Divisions I, II, IV and VII - M
Divisions III, V, VI and VIII - L

14. Refractory and Brickyard Roller Tires

With few exceptions the prevailing schedule used on this classification was "N". On April 13, 1934, several foundries in Division VIII put into effect a new low schedule "O." Within a month this "low" was withdrawn and the higher schedule H substituted. On July 13, Foundry

---

(*) In the schedules the price per lb. is lower for quantities. Therefor the allowance of quantity discount up to 99 pieces is in effect a lower price than when there is N.Q.D. (no quantity discount);

420 filed "O" effective July 23, a new low price, because the previous filing of "O" had been withdrawn. (*) This filing by Foundry 420 was withdrawn on August 28.

The filing of Foundry No. 622 and other foundries in Division VI on schedule M completed the filing on this product, resulting in uniformity without exception.

15. Rolling Mill and Steel Plant - Roll Housings and Caps

Here again price changes were effected by utilization of quantity discounts. The December 5 Report issued by the Industry quoted schedule Q for this product. In February, 1934, Foundries 501, 508 and 713 filed the same schedules, but without quantity discounts. Foundries 407, 424 and 420 jountly filed schedule Q and all quantity differentials availabe therein (new low prices) on March 21. This change became effective in ten days, on March 31. Subsequently Foundries 419, 122 and 105 filed the same schedule, effective before the waiting period was completed on the original filing. Forty-four foundries filed "same as" clauses to the filing by Foundries 407, 424 and 420, above. The First Quarterly Report established the level as Q (all discounts available) for all divisions.

However, in the Second Quarterly Report the Agency indicated the prevailing level as schedule Q (N.Q.D. over 2,499 pieces). (**) Since the records show no filing of this NQD arangement, it is assumed that the Code Authority was responsible for its institution. On August 25, 1934, Foundry 622, followed by the 25 members of Division VI, filed the schedule Q and the N.Q.D. 2,499 pieces. The Fourth and Fifth Quarterly Reports listed the same arrangement as prevailing without exception in all divisions. For this product, leadership in this survey was apparently accorded to Foundries 407 and 424, both divisions of the Continental Roll and Foundry Company, largest producers of Rolling Mill equipment in the Industry.

16. Power Shovel and Dragline Bases - Upper

The schedule suggested in the Report of December 5, 1933, as appropriate for this product was "L". This evidently was the prevailing level in Divisions I, III and VII, being indicated as such in the First Quarterly Report (March 31, 1934). The filings on Schedule M to be representative of all other divisions. One filing of a lower schedule "P" was not met by any other foundry. A few foundries in Division VIII filed H and I (over and under 100 lbs.) but the common level was lower, at M.

(*) The withdrawal of a "low" price eliminates it as a filing - see explanation of withdrawals, pages - 640 & ff.

(**) See page 609 for explanation of N.Q.D.

Division VI established its level at M by the usual concerted action of 26 foundries. The latter part of October, 1934, found all foundries quoting at M except those in Division VII, in which "L" was still the prevailing level.

17. Shoes or Treads - Power Shovel and Dragline

The study of the prices (Exhibit I - Table XIV) of this product classification reveal:

(1) The elimination of filing on weight classes, i.e., over and under 100 lbs., following the ruling of the Definitions and Classifications Committee on April 25, 1934,

(2) The trend of prices, was
   (a) first schedule O - December 5 Report:
   (b) then down to O and P, which most foundries filed;
   (c) down another step to P, filed by only a few foundries;
   (d) Foundry 509 filed R, then withdrew R and
   (e) filed high schedule Q;
   (f) several foundries in Division VIII filed J and K;
   (g) Foundry 509 withdrew Q, and P became the "low" again;
   (h) after May, 1934, there was no filing on weight classes;
   (i) the levels became schedule O in Divisions I, III, VII and VIII and "P" in Divisions II, IV, V and VI, with the exception of 2 foundries in No. III and 3 foundries in No. V which quoted Q.

(3) Although divisional differentials were prevalent, complete uniformity was effected within the divisions which produced most of the product. Division VI is an example of this and exhibits the usual concerted filing by members following Foundry No. 622.

(4) There is evidence of the Agency allowing a price, filed to meet competition, to become effective before the waiting period on the original "low" was completed. In cases of this sort the company filing the second schedule was usually located in a division other than the company filing the original low.

(5) The withdrawal device was effectively used.

18. Valve Bodies

For this classification, the following items are noted:

(1) Filings during the early Code Period quoted various schedules on various weight and quantity specifications. Some filed L and M for over and under 50 lbs;

others filed on over and under 50 pieces; some based their prices on classes of over and under 250 lb. castings and still others quoted just one schedule for all weight groups. Schedules H and I quoted in California were the highest prices - I,J,K,L and M were often quoted by foundries in other divisions. This gives an idea of the lack of uniformity, at least between devisions, which prevailed during the early Code period.

(2) After the issurance of the First Quarterly Report on March 31, 1934, and subsequent rulings by the Code Authority on April 25 and May 5, foundries were not allowed to file on the various weight classifications. As a result, from that time on, only single schedules were filed on all weights of valve bodies.

(3) From May 5, 1934 until the end of the Code only two schedules, I and K, were filed - the I schedule predominating. This was the one suggested in the Bulletin of April 25, 1934, as a minimum. However, 3 foundries in Division I, 5 in Division II, 1 in Division III, 6 in Division IV, 2 in Division V, and 2 in Division VIII, a total of 19, filed K schedules, which evidently were accepted by the Agency. Divisions VI and VII were uniform on schedule I. The procedure of 25 foundries filing the "same" as a "leader" foundry in Division VI established a uniform level there.

B. General Summary of the Price Data

The cases presented in the preceding analyses and similar but more fragmentary data concerning other products may be summarized as follows:

a. Filings in most imstances were not uniform in the early days of the Code.

b. Prices did tend to become uniform, especially in the last eight months of the Code period.

c. This uniformity was facilitated by administrative action, reducing the number of weight classifications, etc., and the concerted action by many producers in filing "same as" some other foundry. Especially in Division VI, source of a large proportion of the Industry's volume, did this procedure prevail. On 582 products, 26 foundries out of 41 in Division VI filed the "same as" Foundry No. 622 after Auguat 23-25, 1934.

d. There was this and other evidence of "follow-the leader" practice.

e. The filing of prices on the important classifications, for example, Rolling Mill equipment, usually "followed" the most important producer.

f. On certain occasions ten or more foundries from the same division would file on the same day, to become

effective on the same date, identical schedules for the same group of classifications.

g. In several instances levels were stable during the entire period and uniformity practically complete from the start.

h. There was usually no definite trend of prices in achieving uniformity and stability. In most of the cases studied the prevailing level did not change during the Code period.

i. Prices, based on number of changes, were more flexible during the first few months of the Code than during the balance of the period. With the increase in uniformity and stability, as the system became more completely operative, the entire price structure, including terms of sale, tended to exhibit more rigid characteristics.

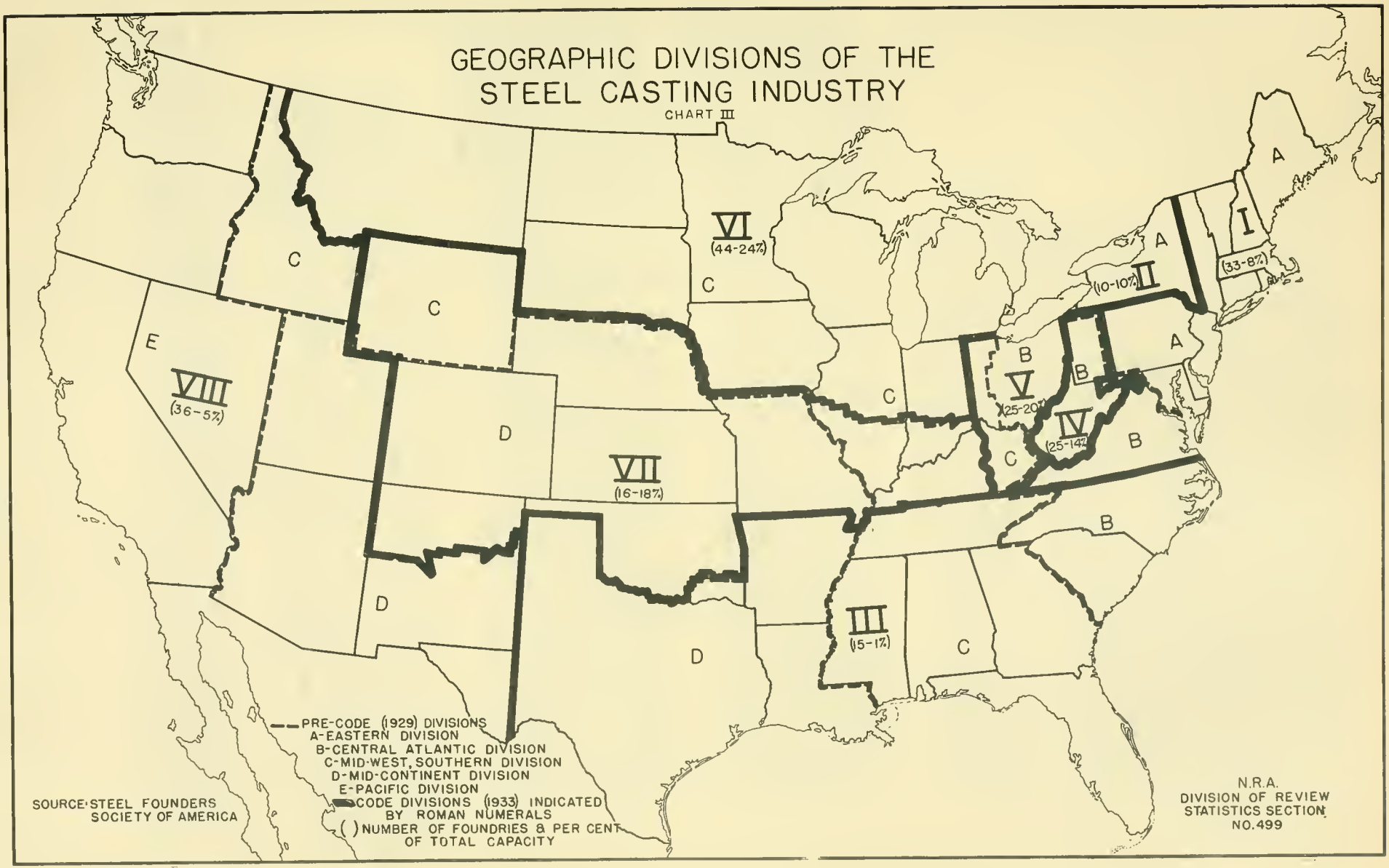
j. There is evidence of a small foundry filing new low prices on a product and not being met by other foundries. A possible explanation for this lack of action on the part of the other members is that the small foundry's production capacity was of little significance and did not affect the prevailing price level. Several times this foundry cut to lower schedules. However, when uniformity among other foundries was achieved, it apparently decided to conform.

k. There are instances in the price filing experience of this Industry that new low prices were filed effective in 10 days. During the waiting period other foundries filed low to meet the competition; apparently, because of this competitive filing, the first foundry withdrew, before the end of the waiting period, and refiled higher prices. In such cases it appears that the existence of a waiting period did deter the tendency to revise prices downward.

l. Ordinarily a new "low" price required a ten-day waiting period before becoming effective. However, there were occasions when a foundry in another division filed the same "low" price on the same date or shortly after the original filing, and the price of the former was permitted to become effective immediately.

m. There were many cases of differentials in filed price seemingly based on geographical location; (*) for example, levels in the California Division, No. VIII usually higher than others. This may be explained in part as the result of higher production costs based on (1) inaccessibility of raw materials, and (2) more complete unionization of plant personnel, with higher labor charges. Another factor advanced as the cause of the higher levels is the lack of competition from producers in other areas, mainly because of long hauls to the market.

(*) See Chart III following.


GEOGRAPHIC DIVISIONS OF THE
STEEL CASTING INDUSTRY
CHART III
VI
(44-24%)
I
(33-8%)
II
(10-10%)
V
(25-20%)
IV
(25-14%)
VII
(16-18%)
VIII
(36-5%)
III
(15-1%)
A
B
C
D
E
PRE-CODE (1929) DIVISIONS
A-EASTERN DIVISION
B-CENTRAL ATLANTIC DIVISION
C-MID-WEST, SOUTHERN DIVISION
D-MID-CONTINENT DIVISION
E-PACIFIC DIVISION
CODE DIVISIONS (1933) INDICATED BY ROMAN NUMERALS
( ) NUMBER OF FOUNDRIES & PER CENT OF TOTAL CAPACITY
SOURCE: STEEL FOUNDERS SOCIETY OF AMERICA
N.R.A.
DIVISION OF REVIEW
STATISTICS SECTION
NO. 499

n. Price differentials to different classes of customers were apparently reduced by the use of a system of standard quantity discount brackets and by the occasional practice of quoting prices without any quantity discount. However, it is believed that the railroad group of customers was relatively successful in preserving the differentials enjoyed in the pre-code days. Threats by this group to shift certain owned patterns to rival foundries and fear of losing railroad business were the pressures which forced concessions from some foundries. These concessions took the form of additional freight allowances for on-line-haul, allowances for patterns and equipment, etc.

o. The establishment of a system of filing delivered prices brought about a uniformity in the treatment of geographical price relationships which had not existed before the Code, when not all producers quoted on a delivered basis.

Filed prices in this Industry for the most part represented a fixed relationship to a suggested cost floor. Price levels supposed to be 87 per cent of the levels in 1926 were suggested by the Code Authority in its report to the members on December 5, 1933. These levels prevailed, much as originally suggested, throughout the Code Period. Evidence seems to point to the fact that these levels were higher, especially on the small castings, than those in effect immediately prior to Code.

The trend of prices in this Industry was downward immediately following the Code. This statement is based on figures submitted by the Steel Founders' Society and presented in Exhibit I Table II and Chart II. It is believed that the same condition prevailed at this time as the period immediately following the price reporting activities employed by the Society in the year 1923 to 1926 inclusive. It will be recalled that the Engineers who examined the Industry's code pricing system made the following statement concerning prices in those years:

"During the examination of 1926 selling prices, the Engineers found that in many cases the schedules used in 1926 were the same as those in effect in 1925, 1924 and in some instances even in 1923. ..Beginning in the latter part of 1926..." (price reporting was discontinued in December, 1926) "...the selling prices generally scaled downward and in most cases 1927 and subsequent schedules were at lower selling prices than those of 1926."

This seems to indicate that schedules, among members, were uniform during the price reporting days of 1923-1926 and that following the end of reporting the levels scaled downward; this experience practically parallels the experience of the industry during the Code and Post-Code period.

Examination of Tables II and III in Exhibit I. and Chart IV. and V. impresses one with the fact that prices of Steel Castings during the period of the Code increased almost twice as fast as costs; increases were 18 percent for prices and about 9½ percent for costs. During the same period prices of "Producers goods for capital equipment" 1/ advanced less than 4 percent, which, when compared with the increase for steel castings, gives the impression that latter went up more than the average.

1/ National Bureau of Economic Research.

AVERAGE SELLING PRICE OF STEEL CASTINGS

1933-1935

SOURCE: STEEL FOUNDERS' SOCIETY OF AMERICA.

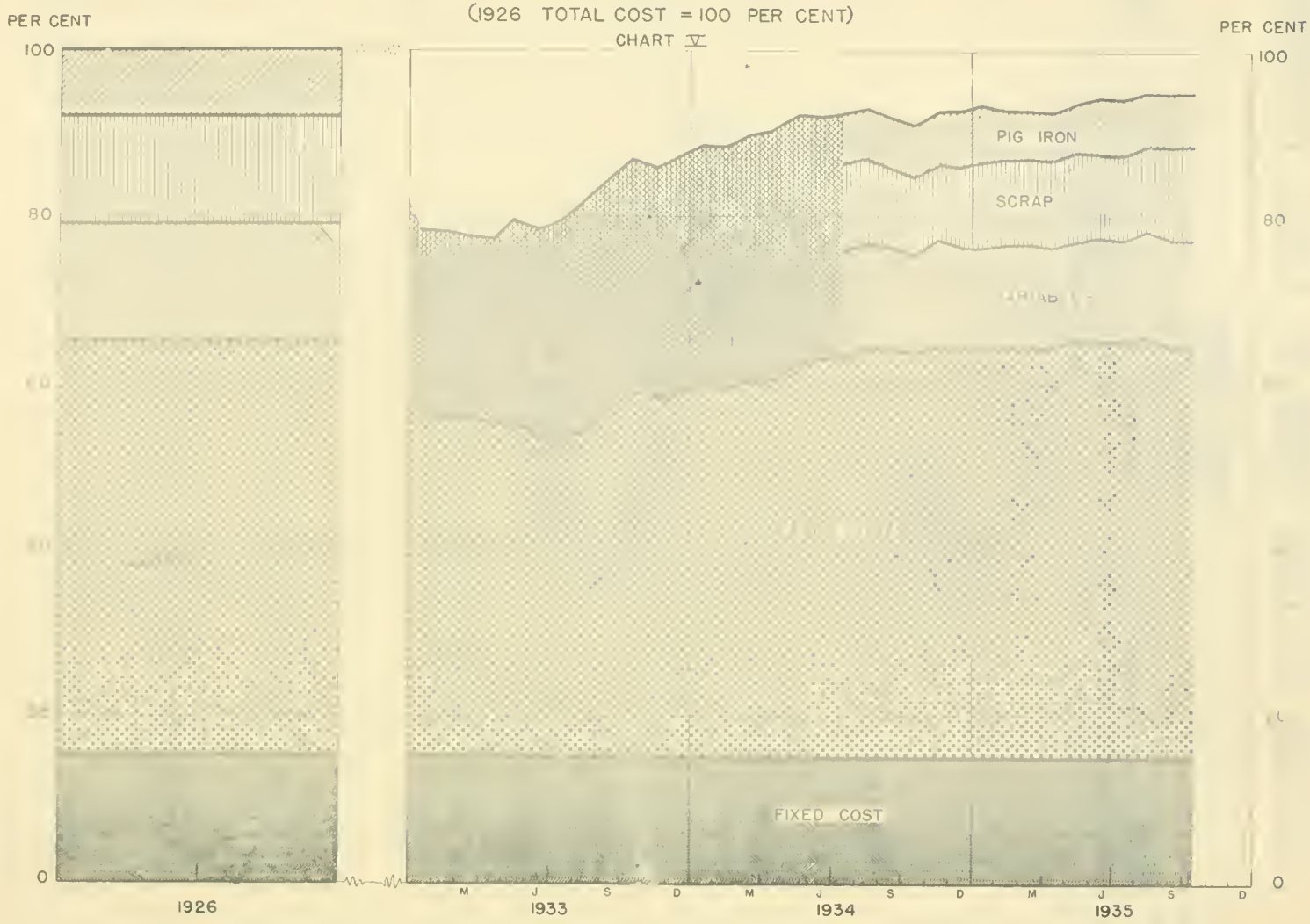
N.R.A.
DIVISION OF REVIEW
STATISTICS SECTION
NO. 507

9826

CHANGES IN PRODUCTION COSTS OF STEEL CASTINGS
1933-1935

(1926 TOTAL COST = 100 PER CENT)

CHART V



SOURCE: STEEL FOUNDERS' SOCIETY OF AMERICA

NOTE- COST DATA FOR RAW MATERIALS AND VARIABLES NOT AVAILABLE FROM JAN 1933 TO JUNE 1934.

N.R.A.
DIVISION OF REVIEW
STATISTICS SECTION
NO. 509

EXHIBIT I

Tables I to XVI

R-P-28

TABLE I-A

Production of Commercial Steel Castings [a]/

(Thousands of short tons)

Total

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	97	87	74	93	109	46	18	14	28	29
FEB	96	89	88	98	108	50	19	12	29	30
MAR	116	103	94	115	113	57	20	13	39	32
APR	114	95	86	122	111	48	17	12	46	32
MAY	103	87	93	127	105	43	14	19	57	31
JUN	99	88	92	116	91	35	13	27	50	28
JUL	91	80	79	118	79	32	11	29	46	31
AUG	85	87	88	121	64	30	12	31	44	35
SEP	83	70	76	107	62	27	11	26	32	35
OCT	83	63	88	121	60	24	13	25	29	43
NOV	89	59	82	110	44	23	14	23	26	36
DEC	85	59	82	106	46	22	14	22	24	38

Miscellaneous

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	58	53	45	57	61	33	13	11	21	23
FEB	53	54	50	58	63	36	15	10	23	24
MAR	66	62	56	66	65	43	16	10	27	24
APR	68	56	53	69	66	35	13	9	28	25
MAY	57	52	56	68	62	31	11	16	34	26
JUN	62	53	61	62	58	26	11	23	31	23
JUL	58	47	51	66	53	24	8	23	28	25
AUG	57	55	61	68	43	21	10	24	26	26
SEP	59	44	51	62	44	20	8	21	21	25
OCT	56	41	59	71	44	17	10	19	20	31
NOV	64	40	51	50	32	16	10	19	19	26
DEC	55	40	56	71	32	16	11	17	19	28

Railroad Specialties

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	39	34	29	36	48	13	5	3	7	6
FEB	43	35	38	40	45	14	4	2	6	6
MAR	50	41	38	49	48	14	4	3	12	8
APR	46	39	33	53	45	13	4	3	18	7
MAY	46	35	37	59	43	12	3	3	23	5
JUN	37	35	31	54	33	9	2	4	19	5
JUL	33	33	28	52	26	8	3	6	18	6
AUG	28	32	27	53	21	9	2	7	18	9
SEP	24	26	25	45	18	7	3	5	11	10
OCT	27	22	29	50	16	7	3	6	9	12
NOV	25	19	31	50	12	7	4	4	7	10
DEC	30	19	26	35	14	6	3	5	5	10

Source: Survey of Current Business.

a/ See note, p.

DIVISION OF REVIEW, NRA

9826

a/ Compiled by the U. S. Department of Commerce, Bureau of the Census, from reports of 130 identical firms, including reports collected through the Steel Founders' Society. These firms have a monthly capacity of 146,900 tons, at present representing over 80 percent of the capacity of the industry for commercial castings (as distinguished from castings used in further manufacture in the same plant), of which 67,570 tons are usually devoted to railway specialties and represent the complete capacity of that branch, while 79,330 tons are generally devoted to miscellaneous castings. Railway specialties include such items as bolsters, side arms, drafts arms, couplers, and cast-steel car wheels. Owing to reports from additional firms, these figures represent revisions of those shown in the Record Book of Business Statistics. Metals and Machinery Section. The revisions in detail appeared in the March, 1928, issue (No. 79), p. 20, including annual averages from 1913 through 1920.

R-P-28

TABLE I-B

Per Cent of Capacity Utilized in the Production of Commercial Steel Castings a/

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	69	60	51	64	76	32	13	10	18	24
FEB	69	62	60	67	75	34	13	8	18	25
MAR	83	71	64	79	79	39	14	9	25	27
APR	81	66	58	84	77	33	12	8	30	27
MAY	74	60	63	87	73	30	10	13	37	26
JUN	71	61	62	80	63	24	9	19	32	23
JUL	65	55	53	81	55	22	8	20	30	26
AUG	61	60	60	83	45	21	8	21	28	29
SEP	59	49	51	73	43	19	8	17	20	30
OCT	59	43	60	83	41	17	9	17	19	36
NOV	64	41	56	76	31	16	9	15	17	30
DEC	61	41	56	73	32	15	9	15	15	32

JAN										
FEB										
MAR										
APR										
MAY										
JUN										
JUL										
AUG										
SEP										
OCT										
NOV										
DEC										

JAN										
FEB										
MAR										
APR										
MAY										
JUN										
JUL										
AUG										
SEP										
OCT										
NOV										
DEC										

Source: Survey of Current Business.

a/ Capacity is based on the average monthly shipments for the best six consecutive months since January 1, 1919.

DIVISION OF REVIEW, NRA

9826

TABLE II

Average Selling Price of Steel Castings
from July, 1933, to September, 1935

(Dollars per Ton)

Year and Month	Open Hearth	Electric	Combined Open Hearth and Electric
1933			
July	a/	a/	137.00
August	a/	a/	144.00
September	a/	a/	144.00
October	a/	a/	159.00
November	111.66	171.64	
December	115.03	169.90	
1934			
January	116.40	181.00	
February	120.00	184.60	
March	116.00	187.20	
April	123.00	188.00	
May	122.40	188.80	
June	125.00	184.40	
July	124.00	183.60	
August	120.00	191.00	
September	122.00	194.40	
October	128.40	193.60	
November	134.00	185.00	
December	131.00	193.60	
1935			
January	127.00	195.00	
February	126.40	195.60	
March	131.60	199.00	
April	131.60	190.00	
May	131.30	190.00	
June	130.00	192.00	
July	128.00	193.60	
August	126.00	190.80	
September	125.00	191.20	

Not available

Source: Steel Founders' Society of America.

a/ Not available.

TABLE III

Changes in Production Costs of Steel Castings
January, 1933, to October, 1935
(1926 - 100 percent)

Year and Month	I Fixed Cost	II Labor Cost	Vari-ables	Scrap	Pig Iron	III Total Raw Materials and Variables	Total of Sum I, II, III
1926	15.0	50.0	14.0	13.0	8.0	35.0	100.0
1933							
January	15.0	41.0				22.4	78.4
February	15.0	40.9				22.2	78.1
March	15.0	40.5				22.0	77.5
April	15.0	40.0				22.2	77.2
May	15.0	39.8				24.8	79.6
June	15.0	38.5				25.1	78.6
July	15.0	38.6				26.1	79.7
August	15.0	39.4				27.8	82.2
September	15.0	42.2				27.8	85.0
October	15.0	44.0				27.7	86.7
November	15.0	43.2				27.5	85.7
December	15.0	44.2				27.9	87.1
1934							
January	15.0	45.0				28.3	88.3
February	15.0	44.6				28.4	88.0
March	15.0	45.4				29.5	89.9
April	15.0	45.6				29.6	90.2
May	15.0	47.4				29.7	92.1
June	15.0	47.9				29.0	91.9
July	15.0	48.3	13.0	10.0	6.0	29.0	92.3
August	15.0	49.2	12.6	10.1	6.0	28.7	92.9
September	15.0	49.0	12.5	9.4	6.0	27.9	91.9
October	15.0	48.5	12.0	9.0	6.3	27.3	90.8
November	15.0	49.7	12.5	9.3	6.0	27.8	92.5
December	15.0	49.0	12.5	9.5	6.5	28.5	92.5
1935							
January	15.0	49.0	12.6	10.0	6.5	29.1	93.1
February	15.0	49.5	12.4	10.0	6.0	28.4	92.9
March	15.0	49.5	12.4	10.0	6.0	28.4	92.9
April	15.0	49.2	12.4	10.0	6.0	28.4	92.6
May	15.0	50.0	12.4	10.3	6.0	28.7	93.7
June	15.0	50.0	12.5	10.0	6.5	29.5	94.0
July	15.0	50.0	12.4	10.0	6.5	28.9	93.9
August	15.0	50.5	12.9	10.0	6.5	29.4	94.9
September	15.0	49.5	12.9	11.0	6.2	30.1	94.6
October	15.0	49.5	12.9	11.0	6.3	30.2	94.7

Source: Steel Founders' Society of America.

R-P-28

TABLE IV

Price and Production[a] of Malleable Iron Castings and Per Cent of Capacity Utilized

Number of Short Tons

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	66,776	56,627	61,072	73,125	62,339	31,665	22,216	12,638	30,417	43,400
FEB	71,161	62,335	65,359	73,875	66,909	34,076	21,578	13,780	33,939	41,377
MAR	80,116	72,205	70,070	83,365	64,389	35,758	19,597	9,959	43,438	42,008
APR	72,241	64,612	63,380	83,744	62,945	36,682	16,758	18,566	40,742	42,035
MAY	65,106	62,747	67,903	81,641	54,277	31,964	17,430	24,628	37,165	34,729
JUN	66,358	64,310	67,090	72,232	39,971	24,248	15,143	31,118	28,340	27,548
JUL	60,384	53,046	60,290	70,600	31,318	20,223	9,703	30,865	23,388	28,915
AUG	62,218	57,096	68,606	69,173	25,933	18,831	7,038	31,811	23,910	35,245
SEP	63,399	50,807	62,665	59,087	26,839	18,485	10,168	27,078	21,541	36,996
OCT	62,321	52,458	70,054	65,526	29,101	20,444	12,586	24,381	25,317	43,467
NOV	50,946	46,698	63,560	46,459	27,470	17,984	13,912	21,944	28,515	44,277
DEC	55,561	53,824	59,428	46,029	30,790	21,503	14,128	21,870	32,746	

Per Cent of Capacity

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	57.4	52.0	62.7	77.7	61.5	31.4	23.5	14.9	35.8	50.8
FEB	61.1	57.8	66.8	77.1	67.2	34.4	23.1	16.2	40.1	49.9
MAR	68.9	65.7	73.0	87.7	64.5	35.9	20.5	11.4	49.9	52.0
APR	62.7	59.1	66.0	87.8	63.0	36.3	18.0	21.8	47.9	51.1
MAY	56.9	57.2	70.7	83.7	53.7	32.1	18.7	29.0	42.7	41.1
JUN	57.3	58.5	69.9	74.9	40.2	24.5	16.3	35.8	33.4	33.5
JUL	52.9	49.3	63.1	73.5	30.9	20.0	10.7	36.3	27.6	34.3
AUG	54.6	52.4	72.1	70.6	26.1	18.9	7.7	36.6	27.8	42.5
SEP	56.4	47.6	66.3	61.2	27.1	18.6	10.9	31.6	25.6	44.7
OCT	55.5	50.0	73.4	66.7	28.8	20.4	13.8	28.4	30.3	51.9
NOV	45.9	44.4	66.8	47.7	27.7	18.3	15.3	25.0	33.5	53.1
DEC	49.4	51.2	63.4	47.3	31.0	21.5	16.2	25.6	38.7	

Average Price per Ton (f.o.b. Plant) (In Dollars)

	1926	1927	1928	1929	1930	1931	1932	1933	1934	1935
JAN	177	148	150	146	137	131	115	112	135	118
FEB	177	148	150	146	137	131	115	107	135	118
MAR	177	148	150	146	137	131	115	104	135	119
APR	177	148	150	146	137	124	115	98	135	123
MAY	177	148	150	146	137	124	115	100	123	127
JUN	177	148	150	146	137	124	96	100	119	126
JUL	177	148	150	146	137	117	107	104	120	126
AUG	177	148	150	146	137	117	115	112	121	124
SEP	177	148	150	146	137	117	120	121	120	124
OCT	177	148	150	146	137	115	115	114	119	122
NOV	177	148	150	146	137	115	115	123	115	119
DEC	177	148	150	146	137	115	115	113	115	

Source: "Survey of Current Business," Foreign and Domestic Commerce; "Wholesale Prices," Bureau of Labor Statistics.

a/ Compiled by the U.S. Department of Commerce, Bureau of the Census, representing reports from 130 identical establishments, covering about 90 per cent of the industry.

TABLE V-A

Average Number of Days Elapsing Between Date Price was Filed and Date Price was Reported to the Industry, Classified by Divisions and Type of Filing

(Composite)

Division	Revisions	Withdrawals	High Price	New Classification	New Divisional Classification	Low Price	Divisional Low Price
I	1.9	1.5	1.2	5.8	1.4	3.6	1.3
II	1.8	1.7	4.9	6.5	1.2	6.5	1.1
III	3.2	3.0	2.0	13.1	2.8	4.5	4.5
IV	2.0	1.7	4.5	7.4	1.5	1.9	3.2
V	2.9	2.8	2.9	6.5	2.1	3.0	3.8
VI	3.0	2.5	3.6	7.0	2.5	5.9	2.8
VII	3.1	2.2	2.0	5.0	3.0	3.7	3.3
VIII	5.0	4.3	0.0	18.2	4.3	15.4	4.3
Total Average a/	2.7	2.4	3.3	7.5	1.8	5.9	3.1

Source: Compilation by Statistics Section of NRA from Daily Price Reports of Steel Founders' Society.

a/ Total average is weighted by number of filings for each type in each Division.

Note: Revision - change of schedule from one previously filed.
Withdrawal - retraction of schedule.
Increased price - change of schedule to one of lower letter - higher price.
New classification - not previously filed on by name by any foundry.
New divisional classification - not previously filed on by name by any foundry in same division.
Low or minimum schedule - lowest price on record.
Divisional low schedule - lowest price on record in particular division.

TABLE V-B

Average Number of Days Elapsing Between Date Price was Filed and Date Price was Reported to the Industry, Classified by Divisions and Type of Filing

(When Elapsed Time was Less Than 10 Days)

Division	Revisions	Withdrawals	High Price	New Classification	New Divisional Classification	Low Price	Divisional Low Price
I	1.6	1.5	1.2	4.0	1.4	3.6	1.3
II	1.7	1.7	2.2	4.4	1.2	3.8	1.1
III	3.2	3.0	2.0	5.1	2.8	4.5	3.4
IV	2.0	1.7	2.4	4.6	1.5	1.9	3.2
V	2.5	2.5	2.5	4.7	2.1	2.2	1.9
VI	2.7	2.5	2.6	4.5	2.5	3.3	2.8
VII	2.8	2.2	2.0	5.0	3.0	3.7	3.3
VIII	4.1	3.7	0.0	5.2	4.3	5.5	4.3
Total Average a/	2.4	2.3	2.3	4.5	1.8	3.0	2.6

Source: Compilation by Statistics Section of NRA from Daily Price Reports of Steel Founders' Society.
a/ Total average is weighted by number of filings for each type in each Division.

Note: Revision - change of schedule from one previously filed.
Withdrawal - retraction of schedule.
Increased price - change of schedule to one of lower letter - higher price.
New classification - not previously filed on by name by any foundry.
New divisional classification - not previously filed on by name by any foundry in same division.
Low or minimum schedule - lowest price on record.
Divisional low schedule - lowest price on record in particular division.

TABLE V-C

Number of Cases a/ and Average Number of Days Elapsing Between Date Price was Filed and Date Price was Reported to the Industry, Classified by Divisions and Type of Filing b/

(When Elapsed Time was 10 or More Days)

Division	Revisions		Withdrawals		High Price		New Classification		Low Price		Divisional Low Price	
	Cases	Days	Cases	Days	Cases	Days	Cases	Days	Cases	Days	Cases	Days
I	6	16.0	--	--	--	--	9	14.0	--	--	--	--
II	2	13.5	--	--	7	12.4	5	14.8	2	12.0	--	--
III	--	--	--	--	--	--	4	27.0	--	--	1	15.0
IV	1	14.0	--	--	4	17.5	4	18.5	--	--	--	--
V	11	20.9	1	18.0	1	26.0	16	12.6	3	10.0	1	23.0
VI	11	17.1	--	--	2	37.5	21	15.6	6	25.7	--	--
VII	2	11.5	--	--	--	--	--	--	--	--	--	--
VIII	10	16.6	1	10.0	--	--	11	25.3	13	21.5	--	--
Total Average c/		17.1		14.0		18.4		17.0		20.3		19.0

Source: Compilation by Statistics Section of NRA from Daily Price Reports of Steel Founders' Society.

a/ Number of cases was shown in Part 3 only because of the relative importance it has as an indication of exceptional instances where the elapsed time was greater than the waiting period specified in the Code.

b/ No cases were compiled in the New Divisional classification.

c/ Total average is weighted by number of filings for each type in each Division.

Note: Revision - change of schedule from one previously filed.
Withdrawal - retraction of schedule.
Increased price - change of schedule to one of lower letter - higher price.
New classification - not previously filed on by name by any foundry.
New divisional classification - previously filed on by name by any foundry in same division.
Low or minimum schedule - lowest price on record. Divisional low schedule - lowest price on record in particular division.

TABLE VI

Number of Low, New and High Price Filings and All Types of Filings Made, by Division

Division	Number of Products on which Filings were Made a/					Total, b/ All Types of Filings
	L	DL	N	DN	H	
Aggregate	897	299	1,470	789	701	4,763
I	8	31	110	72	62	739
II	25	23	177	136	72	500
III	41	27	25	8	4	199
IV	299	35	66	80	48	540
V	105	36	402	74	268	1,025
VI	162	18	602	30	235	1,233
VII	205	25	18	357	8	180
VIII	52	104	66	32	4	347

Source: Compilation by Statistics Section of NRA from Daily Price Reports - Steel Founders' Society of America.

a/ Frequencies represent number of products filed upon by a single foundry or in combination with others, which were given in the status according to the following:

L - New, low or minimum schedule
DL - Divisional low or minimum schedule
N - New classification
DN - Divisional new classification
H - Increased price

b/ Total, All Types - number of times a foundry filed prices or other required material, i.e., discounts, etc. Does not refer to number of products filed at each time.

TABLE VII

Number of Low, New, and High Price Filings and All Types of Filings, by Months

Year and Month	Number of Products on which Filings were made a/					Total, All Types of Filings b/
	L	DL	N	DN	H	
Aggregate	897	299	1,470	789	701	4,763
1933						
December 15 to 31			731			136
1934						
January	4		94			305
February	17		80			316
March	468		162			410
April	68		76			425
May	20		27			364
June	11		54			526
July	42		24			295
August	14		53			228
September	31		18		9	153
October	40	6	22	6	55	204
November	10	39	21	159	25	232
December	17	38	19	392	80	209
1935						
January	3	116	15	89	172	280
February	19	24	18	17	65	169
March	16	28	18	42	237	186
April	107	18	21	65	47	201
May	8	30	17	19	11	124

Source: Compilation by Statistics Section of NRA from Daily Price Reports of Steel Founders' Society of America.

a/ Frequencies represent number or items filed upon by a single foundry or in combination with others, which were given the classification according to the following:

L - New low or minimum schedule
DL - Divisional low or minimum schedule
N - New classification
DN - Divisional classification
H - Increased price

b/ Total, all types - number of times a foundry filed prices or other required material, i.e., discounts, etc. Does not refer to number of products filed.

TABLE VIII

Example of "Same As" Filings: a/ "Rolling Mill and Steel Plant Castings"

Report Number	Effective Date		Foundry Number	Filed Same As Foundry	In Report Number	Effective Date		Exceptions	Additions
50	1934, February	16	116	423	3	1933, December	19		
55		24	502	423	3		19		
81	March	31	504	407 420 424	76	1934, March	31		
85	April	1	422 413	407 420 424	76		31		
87		2	203	407	76		31		
		5	619	407	76		31		
		3	109	407	76		31		
89		4	501 508	407	76		31		7
		4	606	407	76		31		
		5	408	407	76		31		
90		4	310	407	76		31		
		6	126	407	76		31	4	
		6	207	407	76		31		
91		7	517	407 420 424	76		31		
94		11	414	407 420 424	76		31		
96		12	205	420	76		31	1	
		11	306	407	76		31		
97		13	415 626 627	407	76		31		2
104		23	620	407 424	76		31		17
108		27 28	505 512	407 420 424	76		31		
111	May	1	421	407	76		31		
117		9	401	407	76		31		
119		11	113	407 424	76		31		2
121		14	602	407 424	76		31		
125		21	204 209	407 420 424	76		31	1	
172	July	17	707	407 420 424	76		31		

Source: Compilation by Statistics Section, NRA, from Daily Price Reports of Steel Founders' Society of America.

a/ In Reports 90, 96 and 125, and 89, 97, 104 and 119, the filings had exceptions and additions to the "same as" filings submitted.

Note: This method, "same as filing," was used very frequently by various foundries in placing prices on record with the Code Authority. The practice was merely to submit a statement to the Agency to the effect that the foundry files the same prices as another specified foundry in a specific report.

9826

B-166

9826

1:96

TABLE IX

Frequency Distribution of Foundries Submitting Blanket Filings, by Quarterly Reports

Daily Report	Number of Filings	Quarterly Report
Total	496	
1 to 49	19	a/
50 to 99	8	I
100 to 149	2	b/
150 to 199	121	II
200 to 249	61	II
250 to 299	133	III
300 to 349	70	IV
350 to 386	82	V

Source: Compilation by Statistics Section of NRA from Daily Price Reports of Steel Founders' Society of America.

a/ December 5, 1933, Bulletin.

b/ April 25, 1934, Bulletin.

TABLE X-A

Type of Discounts Granted to Other Foundries and Effective Dates

Effective Date	Foundry Number	Type of Discount	Companies Receiving Discount	Effective Date	Foundry Number	Type of Discount	Companies Receiving Discount
Dec. 29, 1933	826-808)	d	All	June 7, 1934	121	a	All
	818-807)			June 11	105	b	126
	820-822)			June 9	309	o	New Orleans
	834	e	All	June 15	304	b	309
	824	f		June 18	108	a	All
	819	d	All	June 19	515	b	District 5
Feb. 23, 1934	207	g		June 22	819	o	All
Mar. 13	601	b		June 26	616	o	All
Feb. 27	636	g		July 30	619	b	District 6
Mar. 5	606	b	All	Aug. 2	204-209	b	District 2
Mar. 14	512	o		June 12	819	f	All
Mar. 23	620	g		Sept. 14	614	b	622
Mar. 30	310	b	All	Sept. 7	126	b	123
Apr. 10	515	a	516	Sept. 12	636	o	All
Mar. 30	516	a	515	Oct. 1	117	b	All
Apr. 12	206	a	District 2	Oct. 5	625	b	All
Apr. 12	202-207)	a	District 2	Oct. 11	516	b	All
	201-208)			Oct. 19	117	b	All
Apr. 13	509	b	519	Oct. 25	629	o	All
Apr. 18	202	a	(201-207	Nov. 1	402-602	b	All
			(208-210	Nov. 12	636	c	All
Apr. 16	201	a	(202-206	Nov. 28	520	b	All
			(207-208-210	Dec. 10	203	b	All
Apr. 20	207	a	(201-202	Dec. 18	635-304	b	All
			(206-208-210	Dec. 21	101	f	All
Apr. 20	208	a	(201-202	Dec. 26	412	b	All
			(206-207-210	Dec. 31	101	a	All
Apr. 23	126	a	105	Jan. 24, 1935	807	o	District 8
Apr. 25	509	a	519	Jan. 28	825-826)	o	All
Apr. 25	408	a	(402-411		827-828)		
			(416-423	Jan. 31	602	b	All
Apr. 24	513	a	625-512	Feb. 7	208-818	o	All
Apr. 26	201	a	Acme Steel	Feb. 4	805-806	o	District 8
Apr. 25	123	a	105	Feb. 5	822	o	All
Apr. 26	625	a	513	Feb. 11	825-826)	o	All
Apr. 27	206	a	(201-202		827-828)		
			(207-208	Feb. 18	210	c	All
			(210	Feb. 19	208	b	All
Apr. 27	519	a	(411-515	Feb. 18	705	o	All
			(509	Feb. 19	311	o	All
Apr. 27	314	b	All	Mar. 2	612	b	All
Apr. 30	405	a	District 4	Feb. 19	805-806	o	All
May 9	519	a	423	Feb. 21	416	b	All
May 8	109	b	District 1	Mar. 6	210	b	All
May 9	407	b	District 4	Mar. 11	621	b	All
May 14	429-119	b	District 1	Feb. 19	821	o	All
May 14	626	a	410	Feb. 22	607	o	All
May 16	416	b	All	Mar. 15	824	o	All
May 18	422	b	District 4	Mar. 20	832	o	All
May 16	504	a	District 4-5	Apr. 9	401	a	All
May 19	401	b	District 4	Apr. 11	421	a	All
May 20	111	b	District 1	Apr. 26	812	b	All
May 26	419	b	District 4	May 3	306	b	All
May 29	102	b	District 1	May 23	504-507	b	All
May 29	521	b	All	May 23	619	a	All
June 1	202	a	All				

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

Type of Discount:

a -"We will allow off of our regular prices discounts of 5% when the castings are resold by the customer without further processing at prices not lower than file prices."

b -"We reserve the right to sell to ... and grant 7½% discount on condition that the products be resold at not less than filed price."

c -"We reserve the right to sell to ... and grant not more than 10% discount on the condition that the product be resold at not less than filed price."

d -"Subject to maximum discount of 20%."

e -"Maximum discount allowed from schedule is 15% on the first two columns, that is, '1 off' and '2-5 off' columns, and 10% on the balance."

f -"Allow maximum 15% discount and on Railroad castings and Bridge castings make a minimum price of 5¢ per pound."

g -"On orders for miscellaneous castings where the agent furnishes the patterns, inspection, and carries the accounts, we will allow 5% commission on sales, said 5% commission to be figured on the net value of the castings shipped. Where patterns are furnished by the customer or by us we will allow the agents 3½%."

TABLE X-B

Frequency of Type of Discounts, by Months

Year and Month	Total	Type of Discount a	b	c	d	e	f	g
Total	120	31	45	32	7	1	1	3
1933								
December	9				7	1	1	
1934								
January								
February	2							2
March	6	1	3	1				1
April	22	20	2					
May	14	3	11					
June	10	3	3	4				
July	1		1					
August	2		2					
September	3		2	1				
October	5		4	1				
November	4		3	1				
December	6	1	4	1				
1935								
January	6		1	5				
February	18		2	16				
March	5		3	2				
April	3	2	1					
May	4	1	3					

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

Type of Discount: (See notes to Table X-A.)

TABLE XI-A

Type of Freight Allowances Granted to Railroads and Effective Dates

Effective Date	Foundry Number	Type of Allowance	Effective Date	Foundry Number	Type of Allowance
Dec. 29, 1933	All	e	June 4, 1934	112	e
Dec. 27	506	a	June 4	418	d
Dec. 28	306	a	June 4	126	d
Jan. 28, 1934	501-508	h	June 5	519	e
Feb. 1	311	g	June 5	517	d
Feb. 5	606	g	June 6	108	d
Feb. 20	636	h	June 6	205	e
	504	i	June 6	128	e
Feb. 25	303	e	June 6	111	e
Mar. 23	504	j	June 7	516	e
Mar. 23	407-424	a and b	June 6	518	d
Apr. 11	105	a and b	June 6	506	d
May 3	204-209	k	June 6	512	d
May 1	512	k	June 7	408	d
May 4	501	k	June 6	635	e
May 9	516	k	June 8	113	e
May 14	832	k	June 6	602	d
May 15	506	a and b	June 14	207	e
May. 28	105	e	June 14	520	d
May 28	407-428	c	June 14	623	d
May 31	109	d	June 19	201	e
June 1	412	d	June 18	601	d
June 1	611	e	June 20	117	d
June 1	122	e	June 22	206	d
June 2	202	e	July 1	208	e
June 1	102	e	June 25	704	e
June 1	410	c	June 26	311	e
June 1	126	e	July 3	640	d
June 2	414	f	July 5	130	e
June 1	619	e	July 6	805	e
June 1	626-627	d	July 6	112	e

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

Type of Freight Allowance:

a - In cases of Railroad castings for repair or maintenance purposes, these prices are f.o.b. freight basing point seller's works with freight charges allowed to the nearest point on the line of the railroad purchaser.

b - In cases of Railroad castings for new equipment to be built either in Railroad shops or commercial car-builders' plants, the prices are f.o.b. freight basing point seller's works with freight charges allowed to destination.

c - In cases of Railroad castings for repair or maintenance, these prices are f.o.b. freight basing point seller's works with freight charges allowed to destination in any case providing such destination is east of Longitude 105, passing through Denver, Colorado.

d - In cases of Railroad castings whether for new equipment or repairs, are f.o.b. our works with freight charges allowed to destination, provided such is east of Longitude 105, through Denver, Colorado.

e - In cases of Railroad castings whether new equipment or repairs, our prices are f.o.b. freight basing point our works with freight charges allowed to destination.

f - In cases of Railroad castings, freight charges allowed to destination on orders of 150 lbs. or more.

g - Allow freight charge east of Mississippi and North of Ohio Rivers.

h - We reserve right to equalize pattern transportation charges with any competing foundry.

i - Published freight rates will be allowed within radius of 150 miles from Akron, Ohio.

j - Published freight rates will be allowed within radius of 250 miles from Akron, Ohio.

k - Reserve right to meet competition, to equalize by freight allowance.

TABLE XI-B

Frequency of Type of Freight Allowances,
by Months

Year and Month	Total	Type of Allowance										
		a	b	c	d	e	f	g	h	i	j	k
Total	71	5	4	3	19	25	1	3	3	1	1	6
1933												
December	2	1				1						
1934												
January	3							11		2		
February	5					1		2		1	1	
March	8	2	2	2		1					1	
April	2	1	1									
May	9	1	1		1							6
June	37			1	17	18	1					
July	5				1	4						
August												
September												
October												
November												
December												
1935												
January												
February												
March												
April												
May												

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

Type of Allowance: (See Notes to Table XI-A.)

TABLE XII-A

Type of Pattern Allowances Granted to Foundries and Effective Dates

Year and Month	Foundry Number	Type of Allowance	Year and Month	Foundry Number	Type of Allowance
Dec. 28, 1933	302-307-313)	b	Mar. 31, 1934	607	a - c - d
	304)		Apr. 4	109-505)	a
Jan. 4, 1934	506-517	c and d		420)	
Jan. 5	Nat. Malleable		Apr. 4	521-109	a
	Cleveland, Ohio	f and g	Apr. 5	128-122)	a
Jan. 9	602-416)	c and d		107-808)	
	407-424)		Apr. 2	808-812	a
	129	b	Apr. 5	705-314-311)	a
Jan. 11	204-422	c and d		813-815)	
Jan. 16	611-412)		Apr. 6	304	a
	619-310)	c and d	Apr. 9	105-805	a
	101-202-413)		Apr. 11	206-801)	a
	407-424)		Apr. 10	124)	
Jan. 17	201-117	c and d	Apr. 13	204-209)	a
Jan. 18	616-207	c and d		834-102-132)	
Jan. 19	629-709)	c and d	Apr. 16	412	a
	616-207)		Apr. 18	629	c and d
Jan. 20	408-109)		Apr. 19	814	a
Jan. 22	509-205)	c and d	Apr. 27	109	a
	128-420)		Apr. 26	832	a
Jan. 24	641-106)	c and d	May 1	405	a
	421-614)		May 3	616	a
Jan. 25	102-126)		May 1	812	a
	601-311)		May 4	801	a
Jan. 26	638-605)	c and d	May 9	516	a
Jan. 27	505-131)		May 11	123	a
Jan. 28	301	b	May 14	832	a
	131	c and d	May 14	816	a
Jan. 31	108	c and d	May 23	822	a
Feb. 1	127-714	c and d	May 28	811	a
Feb. 3	713-306)	c and d	June 14	306	a
	805)		June 14	623	a
Feb. 5	816	c and d	June 19	602	a
	606	g	June 22	512-206	a
	629	c and d	June 23	408-619	a
Feb. 8	511	c	June 27	108-306	a
Feb. 9	701	c and d	July 2	127-302	a
Feb. 12	512	c and d	July 7	504	a
	616	g	July 10	208-407)	a
Feb. 19	635	c and d		424)	
Feb. 21	636	g	July 11	207	a
Mar. 5	636	b	July 13	203	a
Mar. 9	509	a	July 13	202-205	a and e
	129	b	July 13	201	a and e
Mar. 14	512	a	July 16	621-629	a and e
	418	a	July 27	502	a and e
Mar. 17	519	c	Aug. 3	519	e
Mar. 19	421	a	Aug. 6	630	a and e
Mar. 20	504-202	a	Aug. 17	619	e
Mar. 21	639	a and c	Aug. 21	416	e
Mar. 22	637	a	Aug. 22	306	e
	111	c	Aug. 24	513	a
Mar. 23	612	a and c	Aug. 13	105	e
Mar. 24	823-416	a	Aug. 28	814	e
Mar. 26	626	e and d	Sept. 12	112	e
	205-714	a	Sept. 29	314	e
Mar. 28	620	a	Dec. 19	626	e
Mar. 30	310	a	Dec. 26	627-415	e
Mar. 28	131	a			

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

Type of Pattern Allowances:

a - "We hereby file with your office the stipulation where any pattern is in existence and owned by a competing company we will to meet competition likewise furnish a pattern from which to make castings for a customer without any charge, we to be the judge as to when the pattern is to be made and the conditions, pattern to remain our property."

b - "Castings requiring intricate mouldings and castings to be made from sweep skeleton or other incomplete pattern equipment castings having a thin metal section ... will be subject to negotiations on price."

c - "When a new pattern is required and when 500 or more miscellaneous Railroad castings are bought at one time, we will absorb the pattern cost, pattern to remain ourproperty."

d - "When a new pattern is required and less than 500 miscellaneous castings (Railroad) are bought at one time, we will make an extra charge to the customer at not less than cost."

e - "We reserve the right to equalize pattern transportation charges with any competing steel foundry."

f - "When patterns are available in stock there will be no charge to customer - if new pattern is required customer will be charged."

g - "We will make no charge for patterns on Railroad Car castings when orders are for production quantities. Will charge or require customer to furnish patterns in case orders are for jobbing quantities."

h - "We reserve right to supply pattern at no cost when such are for standard parts."

TABLE XII-B

Frequency Distribution of Allowances on Patterns, by Months

Year and Month	Total	Type of Allowance							
		a	b	c	d	e	f	g	h
Total	233	80	7	64	59	17	2	4	
1933									
December	4		3				1		
1934									
January	96		2	46	46		1	1	
February	24			11	10			3	
March	27	17	2	6	2				
April	33	31		1	1				
May	10	10							
June	6	6							
July	20	14				6			
August	9	2				7			
September	2					2			
October									
November									
December	2					2			
1935									
January									
February									
March									
April									
May									

Source: Compiled by Statistics Section, NRA, from Daily Price Reports of Steel Founders' Society of America.

Type of Pattern Allowance: (See Notes to Table XIII-A.)

TABLE XIII-A

Foundries Filing Sales Contracts Specifying Prices Lower than Current Filed Prices, Number of Customers, Products Affected, and Length of Contracts

Date of Report	Foundry Number	Contract		Length of Contract	Number of Products	Number of Customers
		Effective	Expires			
Oct. 20, 1934	518	Oct. 13, 1934	Dec. 31, 1934	2 months - 17 days	3	1
Oct. 23	620	a/	Jan. 1, 1935	a/	2	1
Oct. 23	620	a/	Jan. 1	a/	1	1
Oct. 23	620	a/	Jan. 1	a/	2	4
Oct. 23	620	a/	Jan. 1	a/	1	1
Oct. 23	620	a/	Jan. 1	a/	1	1
Oct. 23	620	a/	Jan. 1	a/	1	1
Oct. 23	622	a/	b/	a/	2	4
Oct. 23	622	a/	b/	a/	2	1
Oct. 23	622	a/	b/	a/	1	1
Oct. 23	622	a/	b/	a/	1	1
Oct. 23	622	a/	b/	a/	1	1
Oct. 23	622	a/	b/	a/	1	1
Oct. 23	626	Aug. 16	a/	a/	2	1
Oct. 23	626	Aug. 16	a/	a/	2	1
Oct. 23	705	Mar. 26	Mar. 25	1 year	2	1
Oct. 23	519	June 30	Dec. 31, 1934	6 months	1	1
Oct. 23	638	a/	Jan. 1, 1935	a/	4	4
Oct. 23	638	a/	Jan. 1	a/	1	1
Oct. 23	638	a/	Jan. 1	a/	1	1
Oct. 25	518	Oct. 5	Dec. 31, 1934	2 months - 21 days	1	2
Oct. 25	619	a/	Dec. 31	a/	10	1
Oct. 25	619	a/	Dec. 31	a/	5	1
Oct. 29	609		b/	a/	1	2
Oct. 29	609	a/	b/	a/	2	4
Oct. 29	609	a/	b/	a/	2	2
Oct. 29	609	a/	b/	a/	1	1
Oct. 29	509	a/	b/	a/	1	1
	628	July 7	b/	a/	2	3
Nov. 22	631	Nov. 10	Apr. 1, 1935	4 months - 20 days	3	4
Nov. 22	631	Nov. 10	Apr. 1	4 months - 20 days	4	2
Nov. 22	631	Nov. 10	Apr. 1	4 months - 20 days	3	1
Nov. 22	631	Nov. 10	Apr. 1	4 months - 20 days	1	2
Nov. 22	631	Nov. 10	Apr. 1	4 months - 20 days	1	1
Nov. 22	631	Nov. 10	Apr. 1	4 months - 20 days	1	1
Nov. 28	635	Sept. 20	a/	a/	1	2
Nov. 28	635	Sept. 20	a/	a/	1	2
Nov. 28	635	Sept. 20	a/	a/	2	3
Nov. 30	505	Sept. 17	Dec. 31, 1934	3 months - 13 days	8	1
	505	Sept. 17	Dec. 31	3 months - 13 days	1	2
Dec. 11	631	Nov. 10	Apr. 1, 1935	4 months - 20 days	3	2
Dec. 11	631	Nov. 10	Apr. 1	4 months - 20 days	1	1
Dec. 11	631	Nov. 10	Apr. 1	4 months - 20 days	3	1
Dec. 11	631	Nov. 10	Apr. 1	4 months - 20 days	2	1
Dec. 11	631	Nov. 10	Apr. 1	4 months - 20 days	1	1
Dec. 11	631	Nov. 10	Apr. 1	4 months - 20 days	1	1
Dec. 11	631	Nov. 10	Apr. 1	4 months - 20 days	1	1
Dec. 11	826	Dec. 30, 1933	a/	60-day clause, either party	5	1
Dec. 17	616	Dec. 12, 1934	b/	a/	5	1
Dec. 17	616	Dec. 7	b/	a/	5	1
Dec. 22	711	Jan. 1, 1935	June 30	6 months	2	1
Jan. 2, 1935	516	Dec. 31, 1934	Apr. 1	3 months	2	1
Jan. 7	619	Jan. 3, 1935	Mar. 31	2 months - 28 days	10	1
Jan. 17	518	Dec. 28, 1934	Mar. 31	3 months - 3 days	1	2
Jan. 23	108	a/	Mar. 31	a/	Blanket filing c/	1
Jan. 31	518	Jan. 28, 1935	Mar. 31	2 months - 3 days	2	1
Mar. 2	514	Jan. 26	Apr. 1	2 months - 5 days	1	2
Mar. 11	511	Feb. 18	Dec. 31	9 months - 10 days	9	2
Apr. 18	504	Apr. 11	Dec. 31	7 months - 19 days	1	1
Apr. 18	705	Apr. 18	July 18	3 months	55	1

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

a/ Not specified.

b/ In effect until further notice.

c/ Fourth Quarterly Report.

TABLE XIII-B

Frequency of Contracts and Customers Filed, by Months

Year and Month	Contracts	Customers
Total	60	91
1934		
October	29	46
November	11	21
December	11	12
1935		
January	5	6
February	0	0
March	2	4
April	2	2

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

TABLE XIII-C

Frequency of Contracts, Classified by Length of Duration

Duration	Number of Contracts
Total	60
2 to 3 months	5
3 to 4 months	5
4 to 5 months	13
5 to 6 months	0
6 to 7 months	2
7 to 8 months	1
8 to 9 months	0
9 to 10 months	1
10 to 11 months	0
11 to 12 months	0
12 months and over	1
Not specified	32

Source: Compilation by Statistics Section, NRA, from Daily Price Reports, Steel Founders' Society of America.

TABLE XIV

Price Schedules Filed on Shoes or Treads -
Power Shovel and Dragline

	Report	Foundry	Filed	Effective	Price Schedule Over 100#	Price Schedule Under 100#	Price Schedule Not Specified
			1933, Dec. 6				O
	4	614	Dec. 21				O
	60	620	1934, Feb. 12	1934, Feb. 22	O - L	P - L	
	61	636	Feb. 17	Feb. 27			P
	63	622	Feb. 18	At Once	O	P	
	66	638	Feb. 23	At Once		P	
	66	612	Feb. 23	At Once			P
	67	609	Feb. 26	At Once	O	P	
	68	713	Feb. 28	At Once	O	P	
	60	(601	Feb. 15	Feb. 19			O - R
		(606					
	61	(601	Mar. 1	Mar. 1		P - R	
		(609					
		612	Mar. 2	Mar. 2			O - R
		609	Mar. 3	Mar. 13			R - L
	64	603	Mar. 6	Mar. 6	O - R	P - R	
	65	609	Mar. 7	Mar. 7			R - L
	67	816	Mar. 9	Mar. 8		P - R	
	71	609	Mar. 14	Mar. 14	O - R	P - R	
	72	606	Mar. 15	Mar. 15			R - W
	76	609	Mar. 18	Mar. 29			Q - L
	77	644	Mar. 21	Mar. 21	O - R	P - R	
	78	612	Mar. 22	Mar. 22	O - R	P - W	
		612	Mar. 22	Mar. 22			O - W
	80	414	Mar. 23	Mar. 23			O - R
		(823					
		(801	Mar. 20	Mar. 20	J - R	K - R	
		(816					
		(632					
	82	626	Mar. 23	Mar. 23			O - R
	83	605	Mar. 26	Mar. 26	O - R	P - R	
	94	618	Apr. 10	Apr. 10		P - R	
	97	305	Apr. 11	Apr. 11			O - R
		709	Apr. 12	Apr. 12			O - R
	98	618	Apr. 16	Apr. 16	O - R	P - R	
	106	418	Apr. 23	Apr. 23			O - R
	107	509	Apr. 27	Apr. 27			Q - R
			Mar. 31	1st Q. R.	(D6,8=O)	(D6,8=P)	(All Others=O)
	108	310	Apr. 27	Apr. 27			O - R
		644	Apr. 27	Apr. 27			O - R
	111	604	May 1	May 1			O - R
	112	836	Apr. 7	Apr. 7			O - R
		626	May 1	May 1			O - R
	113	609	May 3	May 3			Q - W
		609	May 3	May 3	O - R	P - R	
	116	616	May 4	May 4			O - R
	118	620	May 8	May 8			O - R
	120	812	May 10	May 10			O - R
	122	(204	May 15	May 15			O - R
		(209					
	124	614	May 16	May 16			O - R
	126	508	May 18	May 16			O - W
	132	711	May 26	May 26			O - R
	139	126	June 6	June 6			O - R
			June 16	2nd Q. R.			Q
		(634					
	169	(626	June 27	July 7			P - L
		(622					
		(638					
	162	636	July 6				P
	164	619	July 9	July 9			P - R
	166	112	July 9	July 9			O - R
	168	607	July 12	July 12			P - R
	169	619	July 16	July 16			P - R
	170	612	July 14	July 14			O - R
		(501	July 16	July 16			P - R
		(608					
		609	July 16	July 16			P - W
		(616	July 16	July 16			P - R
		(617					
	171	521	July 16	July 16			P - R
	172	707	July 17	July 17			O - R
	173	(619	July 20	July 20			P - R
		(629					
		604	July 20	July 20			P - R
	176	305	July 24	July 24			O - R
		206	July 24	July 24			P - W
	177	606	July 26	July 26			P - R
		801	July 23	July 23			O - R
	178	612	July 30	July 30			O - R
	189	636	Aug. 14	Aug. 14			O - R
	199(x)	622	Aug. 26	Aug. 26			P - R
	209	602	Sep. 12	Sep. 12			P - R
		(634					
		(639					
		(641					
A(x)	210	(619	Sep. 17				P
		(602					
		(626					
		(821					
		(638					
A(x)		(614	Sep. 17	At Once			P
		(626					
		(640					
A(x)		(613	Sep. 18	At Once			P
		(639					
		(606					
A(x)		(630	Sep. 18				P
		(609					
		(633					
			Sep. 20	3rd Q. R.			O (D2,5,6,8=P)
A(x)	213	644	Sep. 20				P
A(x)	214	(624	Sep. 21				P
		(636					
	215	604	Sep. 20	Sep. 20			P - R
A(x)	216	636	Sep. 26	Sep. 26			P
	220	314	Sep. 29	Sep. 29			P - R
A(x)	222	606	Oct. 2				P
A(x)	225	620	Oct. 8				P
A(x)		626	Oct. 6	Oct. 6			P
	226	618	Oct. 9	Oct. 9			P - R
		305	Oct. 10	Oct. 10			P - R
	229	712	Oct. 12	Oct. 12			O - R
	234	607	Oct. 17	Oct. 17			P - R
	235	616	Oct. 19	Oct. 19			P - R
A(x)	241	609	Oct. 29				P
	245	408	Nov. 1	Nov. 1			P - DW
	246	408	Nov. 6				P - DL
	247	602	Nov. 6	Nov. 6			P - R
	249	424	Nov. 20	Nov. 20			P - R
	255	812	Nov. 26	Nov. 26			P - R
			Dec. 13	4th Q. R.			(D1,3,7,8=O) (D2,4,5,6=P)
	326	310	1935, Mar. 7	1935, Mar. 7			P - R
	363	906	Apr. 22	May 2			Q - L
	368	617	Apr. 26	May 2			Q - R
			Mar. 23	6th Q. R.			(D1,3,7,8=O) (D2,4,5,6=P)
	371	609	May 1	May 2			Q - R
	376	621	May 6	May 6			Q - R
	386	607	May 23	May 23			P - R

Source: Compilation by Statistics Section, WRA, from Daily Price Reports, Steel Founders' Society of America.

Note: The letter A with subscript indicates a "same as" filing; for example, A(x) means that the foundry in this instance files the same schedule or price as another foundry above marked (x) in report #199, etc.

In column "price schedule" as in the case of "P - R" in report #368, the first letter is the price schedule and the second letter specifications as follows:

R - revision
L - new low
W - withdrawal
DL - new divisional low
DN - new divisional classification

TABLE XV

Price Schedules Filed on Aeronautical Castings - NOCBN

	Report	Foundry	Filed	Effective	Price Schedule Not Specified
	2	504	1933, Dec. 18		C
	5	206	Dec. 26		C
	60	(501	1934, Feb. 19	1934, Feb. 19	C - R
		(508			
	87	512	Apr. 2	Apr. 2	C - R
	95 (x)	(832	Mar. 26	Mar. 28	C - R
		(612			
		(801			
		(823			
		(815			
			March 31, First Quarterly Report		C
	96	511	Apr. 9	Apr. 9	C - R
A (x)		835	Apr. 7	Apr. 7	C
	97	805	Apr. 10	Apr. 10	C - R
		709	Apr. 12	Apr. 12	C - R
	98	130	Apr. 16	Apr. 16	C - R
	104	618	Apr. 23	Apr. 23	C - R
	105	303	Apr. 18	Apr. 18	B - R
A (x)	112	835	Apr. 7	Apr. 7	C
	116	518	May 4	May 4	C - R
	120	621	May 12	May 12	C - R
	130	311	May 25	May 25	C - R
	135	614	June 1	June 1	C - R
	141	507	June 8	June 8	C - R
			June 16, Second Quarterly Report		C
	161	126	June 22	June 22	C
	162	303	July 4	July 4	C - R
	164	112	July 9	July 9	C - R
	166	117	July 7	July 7	C - R
	170	512	July 14	July 14	C - R
	196 (y)	622	Aug. 23	Aug. 23	C - R
A (y)	210	(834	1934, Sept. 17	At Once	C
		(629			
		(641			
		(619			
		(602			
		(626			
		(621			
		(638			
		(614			
		(628			
A (y)	212	(640	Sept. 19	At Once	C
		(613			
		(639			
A (y)		(606	Sept. 19		C
		(630			
		(609			
		(628			
			September 20, Third Quarterly Report		C
A (y)	213	844	Sept. 20		C
A (y)	214	(624	Sept. 21		C
		(635			
A (y)	218	636	Sept. 26	1934, Sept. 26	C
A (y)	222	608	Oct. 3		C
A (y)	225	620	Oct. 8		C
A (y)		625	Oct. 5	Oct. 5	C
A (y)	241	809	Oct. 29		C
			December 13, Fourth Quarterly Report		C
	307	310	1935, Jan. 31	Jan. 31	C - R
			March 23, Fifth Quarterly Report		C

Note: The letter A with a subscript indicates a "same as" filing. For example, A (y) means that the foundry in this instance files the same schedule or price as another foundry above marked (y) in report #196, etc. In column "price schedule" as in the case of "C - R" in report #307 the first letter is the price schedule and the second letter specifications as follows:

R - revision

TABLE XVI

Price Schedules Filed on Railroad Locomotive Driving Boxes, Friction Type

Report	Foundry	Filed	Effective	Price Schedule a/ Weight not Specified	Remarks b/
		1933, December 5		P	NQD
12	402	December 30	At once	Price given	
24	208	1934, January 18	At once	P	NQD
60	(501	February 19	1934, February 19	P - R	NQD
	(508				NQD
62	805	March 2	March 2	P - W	NQD
		March 31, First Quarterly Report		P	NQD
91	805	April 3	April 3	P - R	NQD over 99 pcs.
	(832				
	(812				
95(x)	(801	March 26	March 26	P - R	NQD over 99 pcs.
	(823				
	(815				
96	511	April 9	April 9	P - R	NQD over 99 pcs.
A(x)	835	April 7	April 7	P - R	NQD over 99 pcs.
97	709	April 12	April 12	P - R	NQD over 99 pcs.
109	124	April 21	April 21	P - R	NQD over 99 pcs.
A(x)112	835	April 7	April 7	P	NQD over 99 pcs.
117	304	May 3	May 3	P - R	NQD over 99 pcs.
124	614	May 15	May 15	P - R	NQD
126	103	May 21	May 21	P - R	NQD over 99 pcs.
132	311	May 25	May 25	P - R	NQD over 99 pcs.
139	128	June 6	June 6	P - R	NQD over 99 pcs.
140(y)	203	June 8	June 8	P - R	NQD over 99 pcs.
141	507	June 6	June 6	P - R	NQD over 99 pcs.
143	641	June 11	June 11	P - R	NQD over 99 pcs.
		June 16, Second Quarterly Report		P	NQD over 99 pcs.
A(y) 151	206	June 22	June 22	P - R	NQD over 99 pcs.
152	614	June 22	July 1	P - R	NQD over 99 pcs.
157	712	June 27	June 27	P - R	NQD over 99 pcs.
158	306	June 29	June 29	P - R	NQD over 99 pcs.
165	112	July 9	July 9	P - R	NQD over 99 pcs.
172	707	July 17	July 17	P - R	NQD over 99 pcs.
189	835	July 14	July 14	(No price schedule)	
		September 20, Third Quarterly Report		P	NQD over 99 pcs.
216	303	September 22	September 22	P - R	NQD over 99 pcs.
235	516	October 19	October 19	P - R	NQD over 99 pcs.
242	105)	October 29	November 8	P - L	NQD over 249 pcs.
	407)				
242(z)	422	October 29	November 8	P - L	NQD over 249 pcs.
246	502	November 3	November 3	P - R	
A(z) 248	419	November 6	November 8	P - L	NQD over 249 pcs.
252 o/	502	November 13	November 13	P	
259	502	November 19	November 19	P - H	NQD over 249 pcs.
260	502	November 22		P - DL	NQD over 249 pcs.
261	418	November 21	November 21	P - R	NQD over 249 pcs.
271	304	December 6	December 6	P - DL	NQD over 249 pcs.
		December 13, Fourth Quarterly Report		P	(NQD over 249 pcs. except D8 D8-NQD over 99 pcs.
285(w)	(805	1935, January 2	1935, January 2	P - DL	NQD over 249 pcs.
	(806				
A(w) 296	808	January 18	January 18	P - DL	NQD over 249 pcs.
A(w) 303	814	January 25	January 25	P - DL	NQD over 249 pcs.
A(w) 308	(812	February 1	February 1	P - DL	NQD over 249 pcs.
	(813				
A(w) 316	811	February 13	February 13	P - DL	NQD over 249 pcs.
		March 23, Fifth Quarterly Report		P	NQD over 249 pcs.

Source: Compiled by Statistics Section, NRA, from Daily Price Report of Steel Founders' Society of America.

a/ P - DL, in Report #316 - the first letter is the price quoted and the second letter or letters are specifications as follows:

L - new low
DL - new divisional low
R - revision
H - new high
W - withdrawal

b/ NQD - No Quantity Discounts allowed.

o/ "In Report #246, filing by Foundry 502, schedule 'P' should have been shown as a new low, effective November 13."

Note: The letter A with a subscript indicates a "same as filing." For example, A(w) means that the Foundry in this instance files the same schedule or price as another foundry above, marked (w) in Report #285, etc.

EXHIBIT II

COMMERCIAL RESOLUTIONS

The rules and regulations prescribed by the Code Authority in its administration of the Code were designated as Resolutions. These were of three types; General Resolutions, Labor Resolutions, and Commercial Resolutions. The Commercial Resolutions embraced most of the regulations affecting price filing and the more important of these are summarized below, grouped according to subject matter.

I. Price Filing Procedure

A. Formal "Call" for Price Filing

Commercial Resolution No. 5 was adopted on November 27, 1933 and sent to all members of the industry. This resolution represented the first formal call for the filing of prices and established December 11, 1933 as the deadline for filing.

B. Waiting Period for Price Revisions

Commercial Resolution No. 7, dated January 10, 1934, established a ten day waiting period before a filed "new low current price schedule on a specific classification or - current prices on an entirely new classification" would become effective.

Commercial Resolution No. 18, adopted May 7, 1934, replaced a resolution of the same number adopted February 13, 1934, and provided:

> "that no member of the Industry shall quote or communicate to customers, directly or indirectly, a price on Miscellaneous Castings before the effective date thereof permissible under Article VII of the Code."

Under date of March 27, 1934, the Legal Division made the following comments on the original resolution: (This original resolution is not available in the records).

> "I do not believe that this resolution is in order nor that the Code Authority (Board of Directors) or any agency appointed by a Subdivision of the Industry can indicate to the industry when it shall or shall not communicate prices to customers. The restriction with reference to filing price lists other than prices themselves is restricted only in so far as the effective date is concerned."

This resolution was withdrawn by the Code Authority as a result of this opinion.

C. Prohibition of Sales Below Filed Prices.

Commercial Resolution No. 24 of May 7, 1934, confirmed the prohibition of sales below filed prices for members of Miscellaneous Castings Branch, as decided informally by the Board on or about November 28, 1933.

The regulation is clearly within the powers granted to the Code Authority by section 3 of Article VII of the Code. No information is contained in the record regarding the incident which prompted the Code Authority to emphasize the prohibition of sales below filed prices.

D. Status of Repair and Replacement Parts

Commercial Resolution No. 2 adopted November 27, 1933, read as follows:

> "RESOLVED, that Cast Steel Parts for new Locomotives or other finished products, built by companies affiliated with the steel foundries producing such parts, are not subject to the Steel Casting Code, but repair and replacement parts for such finished products are subject to said Code."

It may be informative at this point to discuss the background which led to this Resolution and eventually to a request for an interpretation. It had been, for many years, the practice of the railroads of the country to service and repair their own locomotives in their own shops. In the course of such repairs, it was apparently their general practice to buy such steel castings as were required from favorably situated jobbing steel foundries equipped to supply such material. There appears to be no doubt that the preponderant tonnage of such parts was furnished by independent jobbing steel foundries. In 1928, locomotive builders (Baldwin Locomotive Company and American Locomotive Company) appear to have decided upon a change in policy which was probably motivated by the fact that few, if any, locomotives were being purchased by the railroads. This policy appears to have included a plan for increasing the locomotive builders' participation in the supply of repair and replacement parts. In furtherance of this policy, the General Steel Castings Company was organized and a new and large steel foundry was constructed in Eddystone, Pa., adjacent to the works of the Baldwin Locomotive Company. The General Steel Castings company was admittedly subject to the provisions of the Steel Casting Code. However, under the code definition of the industry,(*) it became possible for the locomotive builders to acquire steel castings from their affiliate foundry company, (General Steel Castings Company), at any price they saw fit. They could then be resold to the railroads at prices bearing no relation to those filed by the General Steel Castings Company.

As a result, one of the largest of the Steel Casting Industry markets was being supplied with competitive products at prices which were unknown to the members of the Industry. This was contrary to the principle of an open market for the products of the Industry.

Commercial Resolution No. 2 indicated the attitude of the Steel

---

(*) See Sections 3 and 4 of Article VI of Steel Castings Code.

Founders' Society on this question. This resolution was protested by the locomotive builders at hearings on April 2 and May 2, 1935, but the Schechter decision was handed down before any action could be taken by the Administration in regard to this question.

E. Filing of Sales Contracts.

Resolution No. 6, adopted November 27, 1933, called for the filing of sales contracts made prior to December 11,1933, and which were continued in effect after December 31, 1933. The data so filed were to be submitted concurrently with the other price lists and were to specify (1) date contract was made, (2) name of customer, (3) class of castings involved, (4) prices specified and (5) date on which contract would expire.

Commercial Resolution No. 33, adopted October 10, stipulated that all contracts, at prices below current filed prices, must be filed. A statistical tabulation and summary of the effects of this Resolution is submitted in another section of this report. (See pages 654 ff. .)

The Code Authority undoubtedly felt that the provision of the Code which empowered it to make rulings governing the filing of prices (*), also granted it authority to require the filing of contracts.

Commercial Resolution No. 38 which superseded Resolution No. 33 provided that sales under long term contracts, at prices below the filed price for current sales of the same type of product, did not constitute a code violation if such member filed with Code Authority either a copy of contract or summary of terms. It further provided that, with the exception of the name of purchaser, the particulars as to such contracts were to be disseminated among industry members, in the same manner as all other price data.

F. "Blanket Filings"

A number of times during the Code period, until about February 13, 1934, the Code Authority accepted and reported filings made by foundries to the effect that "we amend our minimum price schedules to minimum prices thus far filed with the Steel Founders' Society, or which at any future time may be filed, such prices to become effective as of same date as the lower prices so filed become effective."

Commercial Resolution No. 17, February 13, 1934, eliminated the above as Code practice, by the following action:

> "RESOLVED, that the filing of 'blanket' revisions of price schedules purporting to meet all minimum schedules filed by all other steel foundries shall not be acceptable and that all revisions must be made in writing individually setting forth the names of the classifications to which they respectively apply, and the corresponding revised schedules."

(*) Article V, Section 1, (c)

A continuation of this practice would have been a deterrent to the success of the price filing plan. Allowing a foundry, to file such sweeping provisions would, in effect, have relieved the foundry of the responsibility of filing current prices.

Commercial Resolution No. 30, adopted October 10, 1934, replaced the above Resolution No. 17 and again permitted the making of so-called "blanket filings" by allowing any member of the Industry to meet the minimum prices filed in his division by a mere statement to that effect. This procedure would seem to tend to the establishment of prices at the level filed by the majority of the members in the division, and published by the Code Authority in the "Quarterly Report." This Quarterly Report was a publication issued quarterly by the Code Authority, containing the minimum and in some cases the prevailing prices filed by all members of the industry, and indicating exceptions to the prevailing levels by the name of the foundry filing such exception. The foundries which filed at the minimum or prevailing levels were not mentioned specifically.

G. Filing of Prices to Meet Specific Competition

Commercial Resolution No. 12, adopted January 10, 1934, defined industry policy on "meeting competition" as follows:

> "No foundry is permitted to sell or offer for sale steel castings at less than the prices shown on schedules filed by such foundry with the Society. If a foundry desires to meet a price of a competitor, it is necessary that the price be first filed with the Society by the foundry desiring to meet such competitive price. If a foundry has not filed on a specific classification, their 'Miscellaneous, N.O.C.B.N., schedule must be used."

Commercial Resolution No 30, (*) in addition to permitting "blanket" filings, also stated that it was possible to file the same schedules as another foundry had previously filed, by merely filing with the Code Authority a statement to that effect and listing the name of the foundry and the date on the Daily Report in which the foundry's filing was published.

Proposed Commercial Resolution No. 39 emphasized the above requirement and provided that a member of the industry, in filing to meet a competitive price with the same effective date as the first filed price, must name the competitor whose price he was meeting.

II. Terms and Conditions of Sale

A. Subsidizing or Financing of Customers

Commercial Resolution No. 34, effective February 19, 1935, prohibited the carrying of insurance on customers' patterns without charge to the customer and provided that where covered by a blanket insurance policy, a share of the cost of such blanket policy must be charged to the customers.

(*) See above.

B. Furnishing Free Service and Goods

About March 22, 1935 a proposed Commercial Resolution dealing with the filing of prices on pattern equipment and machining was submitted for approval. This Resolution, which was proposed to make effective the Code provision prohibiting the absorbing of all or any part of the cost of pattern equipment or machining, required the filing of information pertaining to orders received and accepted for new pattern equipment or machining upon forms supplied by the S.F.S.A. and such information was to be available to any industry member on request.

There is no indication in the record as to whether this resolution was approved or not. Such a requirement would be a logical extension of the price filing plan to include another element of prices which might have been employed to induce sales at less than filed prices. Without such a requirement the price of pattern equipment or machining might have been used as an inducement to purchase castings.

On May 14, 1935, a letter was sent by the Code Authority to all members of the industry requesting a ballot on this proposition. The letter consisted of an elaboration of the original proposition as contained in the proposed resolution.

C. Guaranteeing Delivery Date.

Commercial Resolution No. 40, effective February 9, 1935 represented an attempt to close a loophole in the regulations which permitted members to sell below filed prices. This Resolution cautioned industry members that the practice of promising delivery on dates "which they could not and knew that they could not meet" and the paying of a fictitious penalty for delay in such deliveries might result in a violation of the code.

D. Lump Sum Bidding

Commercial Resolution No. 37, effective February 9, 1935, apparently prohibited the quoting of lump sum prices by members of the industry and required them to quote on a per pound basis only. This Resolution, although approved by the Administration, was protested by a member of the industry. In answer to this protest the Assistant Deputy Administrator submitted the following reply, which clarifies the Resolution:

> "I wish to repeat that there is no provision in the Code that would prevent a member from quoting you a firm price on a specific lot of castings. It is true that such a member is preparing his quotation to you on a firm basis would necessarily have to make the quotation large enough to surely cover the maximum possible weight of the castings delivered since the member would be violating the Code if he delivered castings to you at actual pound prices which were below the filed prices."

E. Quantity on Order

Commercial Resolution No. 21, adopted May 7, 1934 defined the term "quantity," used in connection with the filing and quoting of prices for steel castings, as the number of castings ordered at one time from a specific pattern. The castings were to be shipped or invoiced within 90 days from the date of the order, except in the case of specific projects and in cases where it was physically impossible for the foundry to manufacture the total quantity specified within the above prescribed time. In these cases, it was required that copies of quotations be filed with the Code Authority.

Commercial Resolution No. 27, May 7, 1934 clarified the method of computing "quantities in order" when paired patterns are included.

> "RESOLVED, that in the case of patterns which are paired, that is, consisting of right and left hand, or upper and lower members, quantities are to be computed separately on each such member in accordance with Commercial Resolution No. 21, and the quantities of such members may not be combined for the purpose of determining the quantity or quantities on order."

Quotations involving estimated weights were dealt with in Commercial Resolution No. 32, adopted October 10, 1934, specifying that quotations shall be made on a per pound basis only and

> "In the event the actual weight(s) of the Casting(s) is (are) different from the estimated weight(s) used in this quotation the actual weight(s) will be used as a basis for billing."

III. Distributive Relationships

Commercial Resolution No. 10, adopted on January 10, 1934, defined "sales or commission agents," and established regulations for selling through these agents, in the following terms:

> "RESOLVED, that a sales or commission agent shall be defined as any person, firm or corporation employed by a member of the Industry to sell steel castings to the trade, under such terms and conditions that such agent does not become at any stage of the transaction the purchaser of the castings, and that the castings are sold and billed by the member of the Industry, to the ultimate customer, not to the agent and further
>
> "RESOLVED, that in all cases castings sold through agents or commission sales representatives shall be sold at prices not less than the prices filed by the foundry which produces the castings."

IV. Geographical Price Structure

Commercial Resolution No. 4, adopted on November 27, 1933, provided that prices must be filed on a delivered basis.

Commercial Resolution No. 36, superseding Commercial Resolution No. 4, covered the delivery practices of members of the industry in selling to railroads and prohibited the selling "at a price which

results in a delivered price to the purchaser that is less than the schedule of minimum delivered prices of rough castings filed by the seller" and further prohibited the selling "which results in a net price to the railroad less than the scheduled price filed by the seller, with freight allowed to the nearest point of road with additional freight allowances of five mills per ton mile for the on line haul."

The most important phase of this resolution is the additional allowance of five mills per ton-mile for the on line haul. The previous freight allowance was on the basis of destination as nearest point on the road. At the Industry meeting held in Cincinnati, Ohio, on October 9-10, 1934, the matter of allowing this concession to Railroads was discussed. The Code Authority's letter to the Members on October 16 gave the following report:

> "The Special Committee appointed to study the problem of freight allowances on railroad castings made the following recommendation to the Society:
>
> "'That all Railroad Castings for direct shipment to railroad customers be sold on the following delivery basis; "Freight basing point, seller's works (location) with freight allowed to nearest point on line of road, plus cost of the on-haul of five mills per ton mile via shortest route from the point where customer road receives the shipment , to destination."
>
> "It was explained that no one foundry has more than 15 to 17 railroad customers and the locations of the destinations (shops) are well known to them so that it would be a relatively simple matter to set up a schedule of freight charges to cover all combinations.
>
> "The committee's recommendations met with a diversity of opinion and no action was taken thereon. Instead it was referred to the group comprising manufacturers of railway car and locomotive castings for acceptance or rejection. The matter has not yet been settled."

It was known that the Railroad interests were clamoring for an additional freight allowance; this concession was the outcome.

Under date of January 9, 1935 the Legal Division suggested that the code authority be requested to submit a Code Amendment covering this subject or, alternatively, that

> "A Resolution requiring a break-down of prices to be quoted to railroads so that such prices may be readily compared, would be acceptable to the Legal Division. It could properly provide that prices on sales to railroads must be filed; that such price lists must show the delivered price (delivery to the nearest point of the purchasing line to be deemed delivery) and the freight allowance per ton mile, if any, from the point of delivery to the ultimate destination; and that 5 mills per ton

mile shall be deemed the freight allowance unless the member of the Industry otherwise designates. Such a resolution would afford an adequate basis of comparison without unalterably establishing any of the elements of price."

This question was submitted to the Industry for ballot, which resulted in an overwhelming vote in favor of the proposal. This question was later brought up as an amendment, but was not disposed of before the end of the Code.

Proposed Commercial Resolution No. 43 was a restatement of the material contained in Commercial Resolution Nos. 4 and 36 and in an effort to meet certain objections raised by the Administration. This Resolution, which was received by the Administration on April 16, 1935, provided as follows:

"That on sales of miscellaneous castings to purchasers other than railroads, the requirement of Commercial Resolution No. 4 that filed prices shall be on a 'delivered basis' is hereby declared to mean that such prices are charged for the rough castings f.o.b. seller's foundry, with an allowance equal to the actual charges for delivery to the purchaser, provided, however, that such allowance shall in no event exceed the railroad freight, at the published rate applicable to the shipment, from the seller's foundry to the railroad switching point or terminus nearest to the plant of the purchaser, exclusive of local trucking or other transportation charges from such point or terminus to the plant of the purchaser; and further

"RESOLVED that on sales of miscellaneous castings to railroads, the requirement of Commercial Resolution No. 4 declared to mean that such prices are charged for the rough castings f.o.b. seller's foundry, with an allowance equal to the actual charges for delivery to the purchasing railroad at the point on its lines which is nearest to the plant of the seller, provided, however, that such allowance shall in no event exceed the railroad freight, at the published rate applicable to the shipment, from the seller's foundry to such point on the lines of the purchasing railroad which is nearest to the plant of the seller; and further

"RESOLVED that this resolution shall become effective on July 1, 1935 and shall be applicable with respect to all sales made after that date, including sales under contracts which are in effect before that date, if such contracts are made the fifth day following the date upon which approval of this resolution is received by the Society from the National Industrial Recovery Board."

Under date of May 15, 1935, the Legal Division approved this Resolution, stating that "it is proper that freight allowances be limited to the delivery costs actually incurred "and that for the purpose of comparison it is easier "to regard all allowances as being fixed and confine price variations to the basic charge." However, in view of the effective date of the Resolution, it was suggested that

final approval be withheld pending new NRA legislation.

V. Product Classifications

Commercial Resolution No. 8 dated January 10, 1934, reads as follows:

"RESOLVED, that classification known as 'Miscellaneous Castings, N.O.C.B.N.' shall embrace only such castings as have not been specifically classified by name by any member of the Industry, and that the filing of a new classification not hitherto filed by any member of the Industry shall be considered a revision of the classification known as 'Miscellaneous Castings, N.O.C.B.N.' and may not therefore become effective until ten days after the date upon which such new classification and schedule were filed, and further

"RESOLVED, that if any of the castings produced by a member of the Industry are such that they cannot be properly classified under some one or more of the classifications hitherto filed by any other members of the Industry, such member of the Industry must file a schedule covering 'Miscellaneous Castings, N.O.C.B.N.'

This Resolution indicates that the system of classifications and schedules referred to above was already in use at this early date. The records available do not contain any official notification to the industry that this system was to be employed.

Commercial Resolution No. 13 dated February 12, 1934, provided

"That no member of the Industry shall sell or offer for sale Miscellaneous Steel Castings which have been specifically classified by name by at least one other foundry, without having filed a schedule of prices applying to such specific classification."

The object of this resolution was to promote comparability.

In the course of a general review of the Commercial Resolutions, dated January 17, 1935, the Legal Division made the following comments in regard to this Resolution:

"No. 13. The Legal Division recommends that this Resolution be supplemented by:

"Provided, however, that members of the Industry who have previously filed the prices of such specifically classified Castings as "Miscellaneous" may sell or offer to sell such castings in accordance with their previously filed schedule until the effective date of the revised schedule required to be filed by them by the foregoing paragraph."

"This proviso is considered necessary in order that the foundry filing the specific classification may not thereby prevent other

members of the Industry from selling the casting in question until their revised schedules become effective."

"It is further recommended that action on this Resolution be withheld pending the outcome of the recent price hearings conducted by the Board."

Under date of March 22, 1934, a member of the Legal Division made the following comment, concerning the Resolution explained above:

"It would seem to me that this resolution is not only undesirable and indicates an attempt to control the free filing of prices, but also I doubt if the Code Authority has any authority to pass any resolution which is in excess of the powers granted it by the Code."

On April 2, 1934, a letter was received from the Code Authority containing the following paragraphs:

"We have received your letter of the 28th advising that the Legal Division of the National Recovery Administration disapproves of Commercial Resolutions Nos. 12 and 13 as adopted on February 13, 1934, by the Board of Directors of the Steel Founders' Society of America.

"Accordingly, we have advised the Industry that these resolutions are not effective."

Commercial Resolution No. 16 dated February 16, 1934, stated

"that on and after April 1, 1934 all schedules of prices for the various castings classifications shall be filed in accordance with schedules represented by letters as set forth in "A Study of Schedules for Miscellaneous Castings Based upon Levels of 1926" issued by Steel Founders' Society of America under date of December 5, 1933, provided that schedules filed with the notation N.Q.D. or any other terms filed limiting the quantity or weight differentials shown on above 'study' shall not be construed as a non-compliance with this resolution."

This Resolution enforced the price filing system and made it mandatory that members of the industry should file prices in accordance with the price filing plan and, in a measure, enforced the system of quantity and weight discounts which were an inherent part of the system. As a result of this resolution no member of the industry was able to create his own system of quantity and weight discounts, nor was he able to file different prices for different products within a classification. In other words, the same schedule or prices was automatically applied to all of the products falling within a classification unless a foundry wished to file a new classification specifically exempting certain products from an existing classification and grouping them in a new classification. This resolution is referred to in the minutes of the Board meeting of January 29, 1935, as follows:

"It was the sense of the meeting that the filing of a price specifying a letter schedule but indicating that, for example, one to forty-nine pieces shall take the prices specified in the ten to twenty-four piece column does conform to the requirements of Commercial Resolution No. 16, and is entirely permissible.

"There was a discussion of a question of drafting a proposed resolution making a low price filed for use in a specific contract the open price of the contracting foundry for the effective period of such contract, even though an upward price revision is filed by such foundry following the consummation of such contract. It was pointed out that this question is covered by a resolution (No. 38) already submitted to NRA for approval."

This resolution was supplemented by Commercial Resolution No. 26, adopted on May 7, 1934, which provided that current prices to users of steel castings "shall be filed in terms of letter schedules as provided in Commercial Resolution No. 16."

On June 7, 1934, a report was received from the Research and Planning Division regarding these two resolutions. It strongly recommended the rescinding of any approval which might have been given to Resolution No. 16, pointing out that it prohibited industry members from filing prices in accordance with their individual pricing practices.

Commercial Resolution No. 22, dated May 7, 1934, established a Committee on Definitions and Classifications to meet at least once each quarter for the purpose of reviewing all classifications filed and with power to disallow such classifications, to formulate definitions to apply to any classification, and to require members to define new classifications.

Even prior to the official establishment of this Committee by the above resolution a letter (*) was forwarded to the members of the Industry giving an account of the functioning of this Committee and setting up a number of new classifications in accordance with its recommendation. This Committee had undoubtedly been operating for several months. It is believed that most of the work on classifications was accomplished by the Definitions and Classifications Committee. A casual examination of its duties and functions would immediately point to its great importance in the operation of the Open Price Plan. Comments made by various members (**) indicate that subcommittees in the geographical Divisions assisted in the work of classifying products.

(*) Letter from Code Authority to members of the Industry, April 25, 1934.

(**) Interviews with members - field trips - December 22, 1935.

VI. Price Extras

Commercial Resolution No. 19 of March 9, 1934, provides that the filing of price extras for alloys could not be made by trade name and that either chemical composition or physical properties should be specified. This was a further attempt on the part of the Code Authority to clarify the competitive situation so that all members of the industry might have exact information regarding the operations of their competitors.

The first call for the filing of price extras was issued in Commercial Resolution No. 29, adopted June 13, 1934, and reads as follows:

> "RESOLVED, that there be issued a call for the filing of price extras by the Industry on or before a date ten (10) days after the date of such call."

This represents a further step in securing the filing of all price data. However, nearly all types of extras had been filed before this call.

APPENDIX C

Exhibit I

METHODOLOGY AND SUGGESTIONS FOR FURTHER RESEARCH

Pertaining to Price Filing Study

A. The Code Sample

This study is limited in industry coverage to a basic sample of 57 codes, selected from the total of 444 NRA codes containing open price provisions. This code sample, referred to throughout the study, includes the following industries:

4	Electrical
18	Cast Iron Soil Pipe
20	Salt Producing
23	Underwear and Allied Products
31	Lime
37	Builders' Supplies
39	Farm Equipment
59	Marking Devices
67	Fertilizer
78	Nottingham Lace Curtain
80	Asbestos
81	Copper and Brass Mill Products
82	Steel Castings
88	Business Furniture
90	Funeral Supply
92	Floor and Wall Clay Tile
98	Fire Extinguisher
99	Asphalt Shingle and Roofing
102	Shovel, Dragline and Crane
103	Machine Tool and Forging
107	Ladder
109	Crushed Stone, Sand and Gravel
114	Scientific Apparatus
120	Paper and Pulp
123	Structural Clay Products
128	Cement
134	Gas Appliances
136	Vitrified Clay Sewer Pipe
153	Valve and Fittings
156	Rubber Manufacturing
167	Set Up Paper Box
175	Medium and Low Priced Jewelry
176	Paper Distributing
193	Folding Paper Box
202	Carpet and Rug
204	Plumbing Fixtures
205	Metal Window
220	Envelope
234	Macaroni

249 Tar Manufacturing
265 Coffee
275-1 Agricultural Insecticide
275-2 Industrial Alcohol
275-3 Carbon Dioxide
291 Wood Cased Lead Pencil
303 Cordage and Twine
311 Ready Mixed Concrete
333 Canvas Goods
344 Metal Lath
349 Mayonnaise
366 Retail Monument
401 Copper
410 Retail Tire
421 Marble Quarrying and Finishing
445 Baking
458 Wholesale Confectioners
463 Candy Manufacturing

The industries within this sample have not been accorded equal attention, since it has been impossible to complete separate case studies of price filing experience in all of them. Illustrative material from other industries has been incorporated in some instances, but the report is based primarily on experience records for the above sample of codes.

B. Selection of the Code Sample

The choice of a sample of 57 codes represented a compromise between a broad coverage of all open price codes and detailed studies of price filing experience in a few industries.

Because of the number and complexity of price filing provisions, and the diversity of industry and code environments in which they operated, it seemed advisable to use a sample sufficiently large to counteract the possible bias that would result from a small sample. This approach was further indicated because price filing has been accepted and for the most part administered under the NRA as a regulatory device capable of wide and general application.

Prior to NRA there had been no experience with mandatory price filing plans, nor much with the reporting of present or future prices. The prevalence of such plans under the NRA suggested that an over-all survey of experience would prove more useful than detailed studies.

Accordingly, at one point in the development of the study, one hundred and ninety-one codes were selected as the prospective sample. The codes selected are listed in Exhibit III. This number was eventually reduced to fifty-seven, following an investigation of materials available and a realization that research facilities would not permit the use of a larger sample.

The final selection of 57 codes represented an effort to select codes which would be representative of the total number of open price

codes and would cut across as many of the significant criteria as possible, thus serving to focus the evidence on doubtful issues of administrative policy and economic effects.

To these ends, codes were selected illustrating (1) the different structural features of price filing plans, (2) different industry groupings, (3) different competitive situations, and (4) varied types of experience in operation. Factors considered under the first point were types of information reported, types of central agency, geographical scope, presence or absence of a waiting period, conformity of price filing provisions to Office Memorandum No. 228, presence of minimum price provisions, or the other trade practice provisions such as bid filing, basing points, product standardization, etc. Secondly, codes were chosen from the several industry groups, such as Basic Materials, Equipment, Chemical, Manufacturing, and Distributing Trades, and for different types of products. Under the third consideration, codes were selected for industries with varying degrees of price leadership, or for other loosely organized, with numerous units. Finally, on the basis of operating experience, there were included industries that had had varying degrees of success with price filing and others in which a complete breakdown of price filing had occurred.

Aside from this effort to insure the representative character of the sample, certain factors of expediency influenced the final choice. Codes selected for study by other Units in the Trade Practice Studies Section, or by the Industry Studies Section of the Division of Review, were included in preference to other open price codes, because of the opportunity to obtain significant information relative to price filing from the work-sheets and analysis of these studies. The willingness of trade associations in the Fertilizer, Electrical Manufacturing and Coffee Industries to make their price files available for specific statistical studies instituted by the Division of Review, led naturally to their inclusion in the sample. A survey of the adequacy of NRA file materials promoted the inclusion of certain industries and the exclusion of others tentatively selected.

C. The Work Outline

The preliminary work outline for the study is incorporated in this Appendix to indicate the focus of the research on price filing operations in individual industries. It was originally contemplated that available evidence for all the industries in the sample would be assembled and organized in a series of case studies reflecting the operation of price filing against the industry background and code setting.

These case studies were to have followed the work outline as here presented; with the final report representing a cross-analysis of evidence to focus experience for purposes of comparison and generalization.

Limitations of time and personnel made it necessary to abandon this procedure, except for a few industries. Consequently, the work sheet data were assembled and indexed in accordance with the attached outline, but the final report was written directly from the indexed work sheet rather than from complete and integrated case studies.

The disadvantages of this method are numerous and fairly obvious in character. The significance of much qualitative evidence on price filing appears only through a survey of the entire industry and code situation. The interdependence of methods of filing, administration and industry organization, and the resultant experience, has been indicated throughout the report.

The possibilities for over-all comparisons and appraisals were distinctly limited by this method of treatment. It is at best, exceedingly difficult to identify and isolate the effects of price filing. In the absence of such integrated case histories, it becomes even less possible to discern casual and functional relationships between component elements of price filing and other regulatory and industry factors.

PRELIMINARY OUTLINE FOR OPEN PRICE INVESTIGATION

(Individual industry approach - organization of material in finished report will probably be along different lines)

PRE-CODE HISTORY OF PRICE FILING

I. Industry and regulatory setting.

(See "Some Partial Types .. Sources of Information for Use by Open Price Group" for indicated pertinent data) (p. 744 below)

II. Inception of price filing experiments

A. Functions intended to be achieved - both expressed and implied - e.g.,

1. Eliminate ignorance on part of buyers and/or sellers

a. Misrepresentation and resulting suspicion

2. Eliminate "confusion" in market and promote comparability of price and terms

3. Lessen intensity of erratic or rapid fluctuations
4. Narrow the range of competitive prices by eliminating quotations below a profitable level
5. Lessen discrimination in favor of large buyers
6. Use as device for actual price control at a specific time and place
7. Use as device to change relative competitive positions of units or groups in the industry
8. Police private agreements already existing, etc.
9. Complement and complete existing forms of control

B. Specific industry problems that may have led to adoption of plan, e.g.,

1. Declining market
2. Excess capacity
3. Instability due to technological change or shift in industry
4. Instability due to varied distribution methods
5. Destructive price cutting from other causes
6. Unusual buyer dominance

III. Agency undertaking price filing activities

A. Trade association

1. Scope of membership and activities, e.g.,

a. Location regional associations
b. Product divisions
c. National associations

2. Administrative set-up as related to operation of plan, e.g.,

a. Staff personnel-executive secretary
b. Procedure as to confidential handling of reports, etc.

B. Non-association agencies, e.g.,

1. Government bodies
2. Management engineers
3. Trade journals

IV. Price filing plans developed
(See Section V of outline for code period for expanded detail of analysis to be applied if experiments are elaborate in character)

A. Types of reporting

1. Past transactions only
2. Current prices
3. Future price reporting (with waiting period)

B. Types of information filed, e.g.,

1. Price and/or terms and conditions of sale
2. Prices plus general data on production, shipments, stocks,
3. Information on pricing practices, e.g., freight allowances
4. Products and areas covered

C. Requirements as to filing and dissemination

1. Forms used, etc.

(See V-G of outline on code period)

V. Sanctions and controls employed

A. Moral suasion, e.g.,

1. Group opinion
2. Appeals to self-interest

B. Economic sanctions, e.g.,

1. Liquidated damage agreements
2. Threats of boycott-of supply, and/or demand
3. Black lists - white lists
4. Threats of law suits, prosecution
5. Threats of predatory price cutting
6. Refusal to grant patent licenses

C. Procedural checks and supervision

1. Reports of invoices, orders, etc.
2. Inspection of books, etc.

VI. Performance and reasons for non-performance under plan

A. Actual scope of filing as to areas and products

B. Participation of members

C. Completeness of data filed

D. Sources of difficulty in operation - e.g.,

1. In industry, product or competitive set-up, e.g.,
   Non-comparability of items, too many small units,
2. In administrative technique, e.g.,
   distrust of code authority
3. In compliance activities
4. Legal or other difficulties

E. Remedies employed to overcome difficulties encountered

F. Subsequent history of plan, e.g.,

1. Abandonment - reasons
2. Modification of original plan

VII. Status of price filing experiments with respect to government regulation

A. General position under anti-trust laws and decisions, i.e.,

1. Precedent
2. Briefs

B. Impact of courts, Federal Trade Commission, Department of Justice, on price filing plans used, e.g.,

1. Prosecutions, cease and desist orders, consent decrees
2. Findings on complaints and investigations

C. Encouragement or discouragement of voluntary activities, e.g.,

1. Trade practice conferences
2. Other government participations, Department of Commerce,
3. Experience with War Industries Board, if any

VIII. Attitudes

A. Of participating members

1. Minority groups

B. Of non-participating members

C. Of customers

D. Of administrative agency

IX. Economic Results of Price Filing plans

(See Section XI. in outline for code period for detail)

CODE HISTORY OF PRICE FILING

I. Industry and regulatory setting immediately prior to code
(See "Some Partial Types and Sources of Information for Use by Open Price Group" for pertinent data)

A. Effects of depression

B. Degree of industry organization at this time

C. Comparison with period of any pre-code price-filing experiment

II. Industry Program for price filing as submitted

A. Nature of proposals

B. Reasons to support need for device

C. Functions intended to be achieved
(See detail under II-A in outline for Pre-Code History)

D. Legal considerations involved

E. Proposals discarded before submission to NRA

1. Reasons for discard

III. Controversies arising during code-making period

A. Between members of industry, e.g.,

1. Objections of small units
2. Objections of members using special selling practices
3. Objections of other minority groups

B. Between members of industry and customer groups, e.g.,

1. In distributor relationship, e.g.

a. Influence on position of privileged middlemen
b. Facility for resale price maintenance
c. Fear that distributors' margins would be lowered
d. Technical objections to details of plan, e.g., waiting period, suggested customer classification

2. In consumer relationship, e.g.,

a. Influence on position of privileged large buyers
b. Fixed and excessive prices
c. Reduced incentive to lower prices

(1) For particular transactions
(2) For long-run period

d. Technical objections to details of plan, e.g., waiting period, suggested customer classification

C. Between industry and a competitive industry, e.g.,

1. Fear of adverse effects of price control, e.g.,

a. On raw materials of another industry
b. In diverting sales to a substitute product

D. Between industry and N.R.A., e.g.,

1. General N.R.A. policy
2. Objections of consumers', labor, industrial advisory boards
3. Objections of legal division and research and planning division

E. Changes effected in original proposal

1. Provisions added
2. Provisions deleted

IV. Relation of open price provision to other code provisions considered and/or accepted

A. Compromise after efforts for minimum prices, production control, etc.

B. Other provisions supplementing, implementing or modifying open price provision

C. Open price provision as a device to implement other regulations of prices, credit terms, allowances

V. Analysis of open price provisions as approved

A. Establishment of open price system

1. Mandatory under code

a. At fixed date
b. At specified date

2. Optional under code

a. To be adopted by majority vote of members
b. At discretion of code authority or divisional body

(1) With administrative approval

3. Right to suspend or abandon plan

a. In whole or in part
b. At discretion of code authority
c. By vote of members

4. Areas and divisions included

B. Agency to administer price filing

1. Agency designated

a. Code authority
b. Trade association
c. Executive secretary of code authority or trade association
d. Confidential and disinterested agent - e.g., management engineers, etc.

(1) Named in code
(2) To be appointed by code authority
(3) Appointed or approved by administrator

e. Government or other agency
f. Regional or divisional agencies

2. Powers and duties imposed by code

a. General powers that might affect price filing, e.g., inspection of books
b. Specific powers over price filing

(1) To issue rules and regulations
(2) To prescribe form of schedule
(3) To investigate and void prices
(4) To select products for filing

(3) To investigate and void prices
(4) To select products for filing

c. Obligation not to disclose confidential filings

(1) To code authority
(2) To other members

C. Compulsion on individual members to file

1. All members must file
2. Member may file
3. Members may abide by lowest price on file if they desire

a. After original filing
b. At all times

4. Members exempted from filing
5. Requirement that filings must be withdrawn and new filings made at stated intervals

D. Transactions exempted from regular filing requirements, e.g.,

1. With mail order houses
2. With chain stores
3. With governments
4. With other large buyers
5. With other types of buyers
6. For export purposes
7. For own use or inter-industry sales

E. Products subject to price filing requirement

1. All products
2. Goods customarily sold from price lists
3. Code authority to prescribe

a. With administrator's approval

4. Determined by vote of members
5. Standard products only

a. Code authority to define standard

6. Standard and selected non-standard products

a. Code authority to determine
b. Majority vote to determine
c. Criteria set by code

7. Other inclusions and exclusions - e.g., job lots, custom products,

8. No reference in code to kinds of products included

F. Information which must be filed

1. Enumerated in code

a. Prices, terms, rates, tariffs, price lists, price terms, net price lists, base price, list prices, schedule of prices, all conditions of sale, fixed terms of payment, schedule of rates, individual pricing practices, all terms of sale

b. Credit terms, discounts, discount sheets, cash discounts, trade discounts, quality discounts.

c. Allowances, freight allowances, service allowances, trade-in allowances, advertising allowances

d. Delivered prices; f.o.b. factory prices

e. Prices, trials, rebates, premiums, bonuses, free deals, commission, consignment sales

f. Guarantee policy, sample policy, returned goods policy

g. Names of customers and their classifications

(1) Available to industry
(2) Withheld from industry

h. Buyer's name (past transactions)

i. Invoices

j. Estimating schedules,

2. Code authority may alter requirement

a. With administrative approval

3. Code authority to prescribe information required

a. With administrative approval

4. Code authority to prescribe form

a. With administrative approval

5. Information on past transactions only

G. Requirements as to filing and dissemination

1. Number of copies of price lists to be filed with agency

a. Enough for distribution to all members
b. Enough for distribution to all members and customers
c. One copy

(1) Central agency makes copies distribution
(2) Central agency makes summary for distribution

(a) Code prescribes nature of summary. Specify

2. Filing of price changes

a. Word "filing" defined so as to require entire new price list for each instance of price change

b. Word "filing" defined so as to require change only of part of list affected.

c. Other definitions of filing. Specify.

3. Requirements covering dissemination by central agency to members

a. Distribution mandatory
b. All filed data to be forwarded to all members

(1) Members to bear expense

c. Composite or individual price lists
d. No provision for distribution but data available for inspection by members
e. Dissemination only to producers of similar products
f. Dissemination only to members of same region
g. Dissemination only when specifically requested
h. Dissemination only of upward revisions of prices
i. Dissemination only of lowest price on file
j. Code authority given complete discretion concerning data disseminated to members
k. Data neither distributed nor available to members

4. Requirements covering dissemination by central agency to <u>customers</u>

a. Notice of all price changes to be forwarded

(1) Only when specifically requested
(2) Only to those paying cost
(3) Simultaneously with distribution to members
(4) To members upon filing and to customers on effective date

b. Data open to inspection

(1) By certain classes of customers only
(2) Only of one item at a time. Specify

c. Degree of dissemination to customers discretionary with code authority

d. No provisions covering dissemination to customers

5. Requirements of dissemination by members themselves

a. Members upon each price change must distribute copies (in addition to central filing)

(1) To members
(2) To members and customers

b. Members must "publish" price changes in addition to filing

6. Means and speed of dissemination to members required of central agency.

a. By mail
b. By telegraph or equally speedy means
c. "Immediately" or "promptly"
d. Trade periodical
e. Other provisions. Specify
f. No provision covering this point.

7. Provision forbidding release to one member before all

8. Provision forbidding inclusion or interpretations or comments by central agency in dissemination of information

H. Provisions relating to identification of seller and buyer

1. Code requires agency to include seller's name when distributing filed prices
2. Code forbids inclusion of sellers' name
3. Optional with code authority whether or not seller's name disclosed
4. Symbols to be used to identify sellers
5. No provision concerning identification of seller
6. Buyer's name withheld from other members (Applying only when past transactions reported)

I. Waiting periods and effective date of filing

1. No waiting period required

a. Prices not effective until filed

(1) Effective upon receipt by agency
(2) Effective only when agency's acknowledgement received

b. Prices changes effective at once even before filing

2. Code authority may establish waiting period though code required none

a. Specify under what conditions, if any, prescribed

3. Waiting period after filing required before price becomes effective

a. On all price changes
b. Only when prices are <u>lowered</u>

c. Only when prices are raised
d. Before paying of rebates, allowances, commissions
e. Before other special actions. Specify

4. Waiting period may be waived

a. To meet non-member competition
b. If newly filed price is not lower than the lowest of the already filed prices of other members

5. Length of required waiting period

a. Specify number of days of waiting period
b. Code authority may lengthen waiting period

(1) With administrator's approval
(2) Other conditions. Specify.

c. Code authority may shorten waiting period

(1) Specify conditions, if any

d. Waiting period may be shortened to meet revision by another member

(1) Effective on same date as first filer's price
(2) Effective on same date as first filer's price if not below his price
(3) Effective on same date as first filer's price, if revised filing made before certain part of waiting period has elapsed. Specify part.

e. No provision whatsoever for shorter waiting period

6. Procedure on price changes if waiting period required

a. Declines retroactive on shipments during waiting period
b. Orders for delayed shipments may be accepted at existing price during waiting period before an advance

(1) Maximum number of days ahead

c. Other variations. Specify.

J. Prices must be in effect for specified minimum period before new price may be filed

1. Specify number of days
2. Minimum period for downward but not upward changes
3. Minimum period for upward but not downward changes
4. Exceptions to rule. Specify
5. Limitation on number of price changes in a given period. Specify.

K. Filed price and effective price

1. Member must sell at filed price terms only.
2. Member may sell above filed price terms

   a. In certain cases only. Specify

3. May sell below in certain instances

   a. At a lower price filed by another member

      (1) After reporting to Code Authority

   b. Other instances. Specify

L. Area of uniformity of price

1. Member permitted to file different prices for different regions of the country
2. Code or Code Authority sets up regions for price reporting purposes, check which one

   a. Member of one region, when selling in another region, may not sell below lowest price filed by members of latter region

3. Specific provision requiring uniform prices in all regions
4. No provisions concerning variations as between areas

M. Destruction of price records by central agency forbidden without Administrator's consent

N. Substitute for filing with central agency

1. Prices must be posted

   a. May not sell below posted price

      (1) Specify any exceptions

   b. Prices must be in effect specified period before being revised. Specify number of days.

2. Members must exchange prices directly (and do not file with central agency)

   a. May not sell below prices reported

      (1) Specify any exception

   b. Specify when price changes effective

   c. Prices must be in effect specified period before being revised. Specify number of days

   d. Revised prices must be sent to customers also

3. Publication in trade periodical used in place of central filing system

O. Bids outstanding at time of revision of filed price list

1. When prices increased

a. Bid must be increased also
b. Bid must be registered but need not be increased

2. When prices decreased

a. Bid may be decreased accordingly
b. Bid may not be changed

P. Filings required by other trade practice provisions, e.g.,

1. Premiums
2. Prizes
3. Special services or favors
4. Price concessions, e.g.,

a. Allowances
b. Commissions
c. Rebates

5. Deviations from credit terms
6. Sale of seconds, sub-standard goods, trade-ins, etc.

VI. Functional aspects of other code provisions directly integrated with price filing provision as written, e.g.,

A. No selling below cost provision

B. Minimum prices or fixed elements of prices

C. Provisions governing transportation allowances

1. Freight equalization
2. Delivered or F.O.B. prices
3. Zoning or anti-dumping, etc.

D. Uniform or limited cash discounts

E. Uniform or limited quantity discounts

F. Mandatory classification of customers

G. Mandatory differentials or mark-ups

1. Between trade factors
2. Between base products, etc.

H. Resale price maintenance

I. Uniform contract

J. Advertising allowances

VII. Operation of price filing plan as modified and administered
(This section should record all variations between the code provision as written (analyzed in Section V) and as actually operated)

A. Code Authority or other agency administering plan

1. Organization, e.g.,

a. Committees, staff
b. Procedure, by-laws
c. Delegation of powers
d. Cooperative arrangements with trade association
e. Methods of financing price filing activities, proportion of total budget, etc.

2. Rules and regulations, instructions and suggestions

a. Purpose and authorization
b. Occasion, issues and controversies, e.g., persons involved, economic or administrative developments leading to change
c. Adoption and dissemination
d. Substance, e.g.,

(1) Prescribed reporting form, e.g.,

(a) Contents of form
(b) How issued
(c) Predetermining or restrictive nature
(d) Changes made

(2) System of product specifications or standards
(3) Prescribed terms and conditions of sale to be filed
(4) Prescribed customer classifications and/or trade factor differentials
(5) Prescribed elements of cost or standards of acceptable costs or prices
(6) Rules as to challenge, rejection and investigation of prices filed
(7) All other rules and regulations, instructions and suggestions

3. Procedures instituted in pursuance of code powers or without specific authorization, e.g.,

a. Practices as to form and promptness of dissemination of information filed

b. Practices discriminating between members and buyers or between classes of members and/or buyers, as to form, completeness, promptness, e.g.,

(1) Premature or partial disclosure of price filing

(2) Delay or withholding of prices

c. Practices as to closed bids, refiling of prices, etc.

4. Amendments considered and/or presented to NRA

a. Occasion, issues, controversies and procedure

5. Exemptions and stays

a. Occasion, issues, controversies and procedure

6. Interpretations and explanations

a. Occasion, issues, controversies and procedure

7. Other actions, e. g.,

a. Collusive or coercive activity
b. Special assessments for price filing
c. Assumption of powers not conveyed by code, e.g.,

(1) Requisitions of records, invoices, as a means of checking filed prices against cost or otherwise

8. Sanctions used to secure compliance with Code Authority Requirements (i.e., 2, 3, 5, 6, and 7 above).

a. Moral suasion
b. Threats of boycott
c. Threats of prosecution
d. Liquidated damage agreements
e. Threats of predatory price cutting
f. Comparative use in pre-code and code periods

B. N.R.A. Administration

1. Supervision and control of code authority actions. (For actions listed under 2, 3, 5, 6 and 7 in VII A there should be answered the following)

a. What was the date of action?
b. Was the action sanctioned by the code provision?
c. Were proposals ever submitted to N.R.A. for approval? For review? For record?
d. Were any of them specifically disapproved prior to adoption?
e. Were any of them reviewed and cancelled? Why? By what method (e.g., formal order, letter, deputy, division administrator)? After how long in operation?

f. Did any of these actions lapse or disappear without N.R.A. initiative? Why? After how long a time?

2. Amendments

a. Occasion, issues, controversies

3. Exemptions and stays

a. Occasion, issues, controversies

4. Interpretations and explanations

a. Occasion, issues, controversies

(List dates of all actions under 2, 3 and 4 above pertaining to open price plan. Develop for each the occasion, issues and controversies involved. Indicate for each the nature of prior or subsequent action by the code authority, if any. - e.g., refusal to approve an exemption requested by a member of the industry; recommendation that a particular exemption or interpretation be made; the issuing of interpretations or granting of exemptions which have been approved by the Administration; the granting of an exemption which has been denied by the Administration, Etc.)

5. Special forms of N.R.A. administration, e.g.,

a. Investigations, warnings
b. Assumption of price filing function

6. General administrative or executive orders, e.g.

a. Stay on waiting period
b. Administrative order X-48
c. Executive order 6767

III. Compliance and enforcement

A. Agencies established by code authority for compliance purposes

B. Record of cases handled by code authority and its agencies, including Trade Practice Complaints committee and other bodies

C. Compliance procedure under Trade Practice Complaints Committee or other agency of code authority, e.g.

1. In handling complaints, e.g.

a. Concealment of names
b. Opportunity for hearing

2. In initiating complaints, e.g.

   a. Evidence
   b. Complaint forms

3. Sanctions employed, as to kind, frequency of use and relative success

4. Methods of appeal, e.g.

   a. To higher bodies in the industry
   b. To N.R.A.

5. Informal handling of compliance problems

6. As compared with procedure and attention to other trade practice complaints

7. As compared with procedure established in code or pursuant thereto

D. N.R.A. compliance activities

1. Record of cases handled
2. Procedure
3. Appraisal of effect of N.R.A. compliance activities on efficacy of device
4. Development of legal approach to compliance in open price plan
5. Cases referred for court action

E. Measure of compliance obtained, e.g.

1. Volume and nature of complaints received, adjusted and on hand
2. Devices used to evade, without legal penalty, the price filing provision
3. Reports of field investigators
4. Analysis by areas or type of establishment
5. As compared with other provisions of the code

IX. Performance and reasons for non-performance, e.g.

A. Actual scope of filing as to areas and products

B. Participation of members

C. Completeness of data filed

D. Sources of difficulty in operation, e.g.

1. In industry, product or competitive set-up, e.g., non-comparability of items, too many small units,
2. In administrative technique, e.g., distrust of code authority,
3. In compliance activities
4. Legal or other difficulties

X. Attitudes and opinions of interested parties, e.g., trade association, code authority, N.R.A. deputy, advisory boards, Research and Planning, Legal Division, Administration Members, Members of the industry, distributor customers, industrial and ultimate consumers.

A. At time of adoption of the provision, as to:

1. Function of the provision and the adequacy of the one adopted

a. Objection of the provision
b. Place of the provision in relation to other provisions in the code affecting prices
c. Scope: inclusion or exclusion of middlemen

2. Authorization of Act as to relaxation of Anti-Trust Laws

B. During operation of the code, as to:

1. Function of the provision

2. Proper role of code authority, e.g., as administrative agency only, as director and leader

3. Proper role of N.R.A. in supervision and control, e.g., deputy, administration member

4. N.R.A. policy announcements, e.g., X-48, Office Memorandum 228, Executive Order 6767

5. Performance of members of the industry

a. Compliance
b. Cooperative or destructive efforts

6. Dominance of code authority or other group on prices filed and conformance of other members to them

7. Sanctions employed

8. Adequacy of the provision

a. In coverage
b. In looseness or loopholes permitting coercive practices, etc., evasion or identification or prices
c. In terms of support from other provisions

9. Success of the provision in terms of its declared functions

10. Economic effects
(As listed in Section XI of Outline for Code Period)

C. At termination of the code, as to:

1. Success of the code, in terms of its functions

2. Economic effects

3. Desirability of continuance

   a. In what form?
   b. Under what authority?
   c. With what degree of compulsion?

XI. ECONOMIC RESULTS OF OPEN PRICE FILING, in Terms of Functions and Performance

A. Elimination of ignorance on part of buyers and sellers

1. To what extent was publicity actually achieved, e.g.,

   (a) Did each member of the industry receive all price information or only that pertaining to the products manufactured by him and to the classes of customers served by him?

   (b) Did the Code Authority or its agency combine or otherwise edit the price filings before dissemination to members or to customers? If so, in what way, and to what extent did this limit the actual price publicity afforded under the plan?

   (c) Was price information limited to the highest filed price, the lowest filed price or to partial information of any other character?

   (d) Has the Code Authority or its agencies exempted members from filing information covering transactions with certain classes of buyers, such as mail order houses, chain stores, governmental agencies, etc.? If so, specify.

   (e) How has the resulting publicity of price information compared with the publicity of prices prevailing before the open price plan? To members of the industry? To customers?

   (f) What organized sources of price information, such as trade journal quotations, were available to members prior to the introduction of the open price plan? To customers?

   (g) Has the failure of the code to make adequate provision for dissemination of price information to customers prevented any real elimination of ignorance?

   (h) Where the code provides that price lists shall be made "available" to customers, what has been the practice of the Code Authority or its agencies in this regard?

   (i) Where the code provides that price lists shall be made "available" to customer, to what extent have customers availed themselves of this privilege through inspection or through requests for filed prices?

(j) Have customers received all price information or only that part pertaining to their own particular classification?

2. What have been the results of the increased publicity of prices and price terms?

(a) What evidence is there that price publicity has had a tendency to diminish competitive risks by eliminating certain types of business uncertainty? e.g., as to prices charged by competitors? as to customer classifications followed by competitors? Through increased stability of prices? Through provisions for adjusting prices on forward contracts?

(b) Has the open filing of prices of products used as raw materials in other industries had an effect on the stability or level of costs for such materials? If so, has this effect been reflected in price changes in the product of the industry buying the materials?

(c) Has publicity of prices resulted in any change in buying practices, such as the elimination of bid shopping, of speculative buying, changes in the size of inventories, length of advance contracts, etc.

(d) Has it enabled members of the industry to combat customers' misrepresentation of competitor's prices?

(e) Has the publicity or stabilization associated with the plan resulted in strengthening, stabilizing or increasing the production or prices of a <u>supplying</u> industry, i.e., in industries where weak prices in the finished product react on the prices of raw materials?

B. <u>Elimination of confusion and the promotion of comparability and uniformity of price quotations and terms and conditions of sale</u>

1. To what degree were terms and conditions of sale uniform prior to the adoption of the open price plan? Prior to the depression? To what extent were filings of terms and conditions uniform when the open price plan was first put into operation? To what extent were they uniform just prior to the termination of the codes?

(2) Have open prices promoted comparability and uniformity, e.g.,

(a) Through the detail required in the reported form prescribed by the Code Authority?

(b) Through a system of product specifications prescribed by the code or Code Authority for the purposes of price filing?

(c) Through the requirement by the code or the Code Authority of a uniform sales contract?

(3) To what extent has the price filing plan, or the rules and regulations established pursuant thereto, altered or modified previous industry practice as to terms and conditions of sale?

(4) Has the requirement of price filing acted to encourage a lack of uniformity in terms and conditions of sale to counteract a uniformity in the nominal price i.e., have differences in real price tended to take the form of filing varying terms and conditions of sale or in fine distinctions between products rather than differences in the nominal price?

(5) Has standardization effected by a price filing provision been a factor in price stabilization and price uniformity?

(6) Does standardization developed under an open price plan tend toward certain ideal standards, (i.e., quality or simplification) or toward the identification and price classification of existing products, or toward those of the most effective competitor in the industry?

C. Changes in the frequency and abruptness of fluctuations in price levels

(1) Do price changes follow changes in volume of production or volume or sales as closely under the open price plan as prior to its adoption?

(2) Do prices under the open price plan change more or less frequently than formerly?

(3) Do prices under the open price plan change more or less violently (i.e., are the price changes greater in magnitude) than formerly?

(4) What has been the effect on frequency of price changes of a requirement that filed prices must remain in effect for a certain period before a new price may be filed?

(5) What tendency is there for price changes to be limited to the meeting of competition of a lower filed price? To undercutting below that price?

(6) Has a trend toward uniformity in terms and conditions of sale under open price filing led to more frequent changes in the list price of products than formerly?

(7) Did price changes previously take the form of changes in the list price pr in the changes in discounts or other conditions of sale?

(8) Have price changes under the open price plan been through a series of small changes brought about by several re-filings or have changes been centered in single changes upward or downward?

(9) Has the publicity afforded by an open price plan led to the elimination of erratice price movements arising from rumored price changes on the part of one or more members of the industry?

D. Maintenance of prices at high levels

(1) Through reduced incentives to lower prices, for particular transactions, or for long-run period

(a) Is there any evidence that prices have been maintained at a higher level under an open price plan because the reduction of a price to secure a particular order or class of order would result in the lowering of the price for all other customers in that category?

(b) Is there any evidence that the knowledge that price reductions will immediately be known and followed by competitors has deterred a member from filing a reduced price even when such a reduction was economically possible?

(2) Through follow-the-leader practices to raise prices to more profitable levels

(a) Have members tended to follow the leadership of dominant members in raising prices?

(b) Have upward changes been more frequent, and of greater magnitude than downward changes?

(c) Have re-filings to meet upward changes occurred more rapidly than in the case of downward changes?

(d) Did prices advance to any marked degree in anticipation of open price filing or immediately thereafter? If so, have these prices been maintained or increased?

E. Reduction of prices to unprofitable levels through increased price-cutting

(1) Has the open price plan tended to lower the going level of prices to the level of the lowest cost producer or to that of the traditional lowest pricing member?

(2) Have prices been lowered by the tendency of sellers to undercut published prices? To what extent have no selling below cost provisions been used to stop this tendency?

(3) Was price cutting more or less prevalent than before the open price plan?

(4) To what extent is a provision against sales below cost or destructive price cutting necessary?

(5) To what extent are the provisions in Office Memorandum 228 a satisfactory protection against destructive price cutting?

F. Narrowing of the range of competitive prices by the elimination of quotations below a profitable level

(1) What evidence is there that price publicity has had a tendency to narrow the range of competitive prices which have prevailed in the past?

(2) Has this narrowing of the range of competitive prices occurred through the elimination of quotations below a profitable level or through the elimination of the higher quotations previously existing in the industry?

G. Effect upon the maintenance of resale prices

(1) Has the establishment of uniform trade discounts in connection with open price plans led to an increase in resale price maintenance?

(2) What effect has the failure of the price filing plan to include middlemen had in making re-sale price maintenance less possible by those manufacturers having their own retail outlets? Selling direct?

(3) Has resale price maintenance been furthered by the practice of filing the names of distributors entitled to certain customer classifications?

H. Use of the device for temporary control of price movements

(1) Has the open price plan been used to further control over price movements in the industry by preventing changes without advance notice? By delay in distributing or accepting filed prices?

(2) What evidence is there that cost provisions in the code have been used, either before or after approval, as a club against members filing low prices? How was this accomplished?

(3) To what extent has customer classification aided in control of the price structure?

(4) Has control of prices on particular transactions been effected by comparison of bids before submission, or by the use of a bid-checking bureau?

(5) Has control over the price structure been furthered by the requirement either in code or through Code Authority that filed prices must include certain fixed or suggested differentials, charges or other elements or price?

(6) In what respects have open price plans gone beyond the function of publicity of prices to control of prices or pricing practices?

I. Use of the device to police private agreements

(1) Did members of the industry exchange information regarding prices or terms to be filed under an open price plan before it was put into effect?

(2) Were the prices first filed under the code uniform?

(3) Have simultaneous changes of price filings occurred after the plan was set up?

(4) Is there any evidence that filed prices bear a fixed relationship to a suggested cost-floor, an existing price agreement or any other established base?

(5) Is there any evidence of efforts to keep members prices in line with a predetermined schedule, e.g., by systematic challenges of prices below that schedule? By pressure upon a member to raise a filed price? By threats of boycott? Of citation for code violation?

(6) Is there any evidence that members of the industry have agreed to follow the price leadership of one or more members in the industry?

(7) To what extent does price uniformity occur above the lowest price? What evidence is there to show any direct relationship between such uniformity and collusive activity of one kind or another?

(8) To what extent has price filing been used as a cloak or a device to implement collusive price?

J. Alterations in the position of favored buyers or classes of buyers

1. by the elimination of secret rebates or secret concessions
2. by lowering of previous differentials

(1) Was the granting of secret rebates or special concessions prevalent in the industry prior to the adoption of the open price plan?

(2) Is there any evidence to indicate that such rebates have persisted or have been eliminated under the open price plan?

(3) What other forms of discrimination by the individuals or special classes of buyers existed prior to the open price plan?

(4) Has the open price plan served to eliminate these forms of discrimination?

(5) What evidence is there that price publicity has had a tendency to stimulate the use of indirect or secret forms of price competition in cases where it is specifically required that all terms and conditions of sale be reported in price lists? Where it is not so required?

(6) What special terms, services and favors still appear as forms of discrimination between customers of the same class? Between customers of different classes?

(7) Has the failure to extend the price filing requirement to certain types of transactions such as chain stores, mail order houses, permitted the continuance of favored treatment? When such transactions are covered by the price filing plan are special prices filed for this class of buyers? What changes have actually been effected in the position of these buyers?

(8) Has the publicity concerning price differentials to different classes of trade led to a lowering of previous differentials for any class of consumers or distributors?-i.e. through pressure from less favored groups? Through uniform treatment by members?

(9) Have previous classifications of customers and the trade factor differentials applying to such classifications been altered by the establishment of a uniform classification established by the Code Authority?

K. Changes in the relative competitive positions of units or groups in industry

(1) Has publicity of prices resulted in a shift in the volume of sales between members of the industry - through customer knowledge of cheaper sources of supply? Through actual changes in the relative prices of members through meeting competition? Through the shifting of customer preference under the existence of uniform prices?

(2) Have previous price differentials disappeared - e.g., between large and small members? Between different areas? Between known and unknown brands? Between inferior and superior quality goods?

(3) Has this been due to increased price competition or to the nature of the price filing requirements themselves as regards product classification, etc.?

(4) Has the failure of the code to include middlemen under the jurisdiction of the code proved discriminatory against members of the industry performing their own distribution functions when the latter are required to abide by filed

prices? In what way? What means were, or could be used to eliminate this difficulty?

(5) Is there any evidence that open price plans alter the focus of price leadership in the industry? i.e., from the small unit to the dominant producer, or vice versa? Does it, on the other hand, strengthen the influence of a former price leader?

L. Diversion of sales to substitute products

1. Through filed prices becoming a target for underselling on competitive products
2. Through diversion in demand because of increase in price

(1) Have there been any diversion of sales to substitute products because the mere openness of prices have encouraged undercutting on competing products?

(2) Has this undercutting been facilitated by higher prices under the open price plan?

(3) Has diversion of sales been facilitated by inflexibility and restrictive features of the price filing plan?

M. Use in conjunction with other provisions in the code or other merchandising methods existing in the industry

(1) Has the presence of previous merchandising plans in the industry - such as uniform cost figures, discount sheets, uniform extras or differentials, contributed to the uniformity of prices under the open price plan? To the inflexibility of the parts of the total price structure?

(2) What is the interdependence, in performance and in results between open price filing and other price restrictive provisions in codes?

(3) What supplementary provisions covering prices or other forms of control are considered necessary to the successful operation of the open price plan in terms of its various functions?

Miscellaneous Points of Inquiry.

(1) Has the existence of a mandatory waiting period discouraged individual sellers from initiating price changes because of their anticipation that such changes would be promptly made by competitors?

(2) Give evidence, if any, that where there is a mandatory waiting period individual members have been discouraged from initiating price changes because of the opportunity furnished competitors to exercise pressure or to practice collusion.

(3) Has the Code Authority in any way altered the length of the waiting period prescribed in the code or in the absence of a waiting period introduced one by instructions or interpretations with respect to the time prices shall become effective?

(4) Has the presence of a waiting period by offering opportunities to meet a competitive price on the same effective date, resulted in more uniformity of prices and terms and conditions of sale?

(5) Is the waiting period an important element in coercive practices? Is its absence or presence in the code itself significant or can the same results be achieved by administrative tactics?

(6) Has the identification of sellers names in open price filing led to pressure on individual sellers to alter filed prices?

(7) To what extent is the identification of the seller necessary to the functioning of an open price plan? In what types of industries (as to products, concentration, size and distribution of units, etc.) does such identification become necessary in order to permit comparability of prices filed?

(8) Did legal sanctions generally replace moral suasion and economic sanctions in the open price plans under the codes, or did they only supplement such sanctions? Were the economic sanctions listed in Section V B of the outline for the pre-code period employed to a lesser extent under the codes?

(9) What were the comparative results of plans that provide only price filing and those that have collected and utilized more complete data on market conditions - production, shipments, stocks on hand, etc.?

(10) What evidence is there to show the comparative effects of mandatory price filing under the codes with participation of the entire membership as contrasted with voluntary price filing schemes?

(11) Is there any evidence to show that previous experience with open price filing was conducive to more successful operation of an open price plan, either because of the perfection of the mechanics of price filing and disseminatio , or because of the attitudes of the members participating?

(12) What have been the deterring factors that kept code price filing plans inactive even when authorized in the code?

(13) What difficulties or considerations have led to the abandonment or staying of open price filing in specific cases? Were these dependent upon the plan itself, the nature of the industry or products, or upon difficulties in administration?

(14) What differences in the operations and economic results of open price plans can be traced to the presence or absence of a trained executive secretary or industrial management agency? -- e.g., as to smoothness of operation, as to compliance, as to control and direction of prices and terms and conditions of sale?

(15) What criteria have been developed for the review and rejection of prices that are below cost, incomplete or otherwise contrary to the open price plan as written? What provisions have been made for appeal in such cases?

(16) Is there any substantial evidence of abuse or misuse of price information by Code Authority members or others having access to price filings before their dissemination to the industry as a whole?

(17) What procedures have been developed to check violations under the mandatory open price plans in codes? Which of these could be recommended and what safeguards should be present to prevent intimidation of members and other abuses?

(18) Does the type of agency employed have any direct bearing on the degree to which price filings are held confidential?

(19) What criteria of the "successful" operation of an open price plan have been set up in the various industries? Which of these can be accepted as a guide to public policy?

(20) If open price plans are to be adapted to fit individual industries, what criteria can be set up from the nature of the industry itself? From the past record of the operation of price filing in the industry?

(21) Can causal or coincident relationships be discovered between types of industries and products and types of performance and results under open price plans?

(22) In what respects have open price plans gone beyond the function of publicity - into prescribing or regulating pricing practices or prices themselves?

(23) Can open price systems feasibly be confined to the function of providing price publicity? What are the limiting factors to accomplishing this? What are the safeguards - positive and negative, that might be necessary to accomplish this end?

(24) What current information about prices, etc., should be available for government supervision of open price plans, e.g.,

(a) Statistical reports

(b) Administrative reports

POST-CODE PERIOD OF PRICE-FILING EXPERIMENT

I. Attitude concerning continuance of code and open price plan

A. Code Authority
B. Industry members
C. Customer groups

II. Relation of code price filing provision to changed legal stauts under Anti-Trust Law.

A. Analysis of provisions contrary to anti-trust laws
B. Necessary changes

III. Efforts to continue code or related plan for price filing

A. General appeals to members
B. Submission of voluntary code
C. Trade association organization
D. Liquidated damage agreements

IV. Price filing plan as continued or reorganized

A. Agency to administer plan
B. Scope of plan

1. As to products
2. As to areas
3. As to items filed

C. Requirements as to filing and dissemination

1. Description of requirements
2. Changes from previous code rulings

D. Other provisions used to supplement open price plan

1. Uniform terms, etc.

E. Administration of plan

1. Points of variance from code plan
2. Sanctions and controls employed

V. Performance and reasons for non-performance
(See outline for code period for detail)

A. Comparison with pre-code and code periods as to effectiveness
B. Difficulties encountered
C. Suggested remedies

VI. Present and potential economic results
(See section XI on outline for code period for detail)

SOME PARTIAL TYPES OF INFORMATION
FOR USE BY OPEN PRICE GROUP

A - Descriptive industry materials - Historical picture of

1 - Size of industry - (e.g., number of concerns and plants and their relative size, volume and value of production)

2 - Geographical distribution of industry

3 - Processes performed by industry

4 - Product characteristics - (e.g., extent of product differentiation, standardization, role in production or consumption, perishability, indlucing style)

5 - Technological development

6 - Types of distribution - (e.g., extent of direct selling, use of independent intermediaries)

7 - Financial structure of the industry

a. Assets and liabilities
b. Capital and surplus
c. Income and disbursements
d. Profits
e. Financial relationships between members and between members and related industries
f. Bankruptcies and insolvencies

8 - Competitive structure of industry - (e.g., dominance of large members, concerted movements in adoption of trade practices, collusive price and production activity, patent controls, relative consumer acceptance, concentr tion)

9 - Exports and imports, tariff protection

10 - Nature of the market

a. Elasticity-response of price to changes in supply and demand
b. Susceptibility of product to changes in supply independently of price
c. Nature of demand; elasticity; dependency on seasonal or other occasional factors, etc; dependency on other industrial activity or demand, etc.

11 - Production trends - (e.g., plant and productive capacity, volume of production, shipments and inventories)

12 - Price trends - (e.g., wholesale and retail price levels, changes in terms and conditions of sale)

13 - Cost trends - (e.g., labor, raw materials, overhead, taxes)

14 - Changes in industry condition during depression period

15 - Organization of industry for trade association work, cooperative and educational activities

16 - Impact of the anti-trust laws on the economic development of the industry - (e.g., cease and desist orders, merging of assets)

D. Sources of Information and Research Procedure

Relevant material on price filing experience in each of the fifty-seven industries was assembled from NRA files. This information was transcribed to work sheets by investigators, and constituted the major body of material in this report. These files contained transcripts of public hearings, correspondence between NRA, and code authorities, industry members, and other interested parties; intra-NRA memoranda; correspondence between code authorities and industry members; protests of members and non-members to NRA or other governmental agencies; minutes of code authority and industry meetings; code authority bulletins to members of industry; price lists and filings; and uniform reporting forms used in some industries. The files were characteristically incomplete with respect to the latter types of data, but did contain a substantial amount of information of a qualitative and descriptive character. In most cases, the files for industries included in the sample were covered by investigators of the Price Filing Unit, but in some instances work sheets were received from other studies in progress in NRA.

A thorough search was made in NRA files for price filings which had been collected by NRA. The discouraging results of that search have been noted in Chapter VI above.

Usable sets of price filings were available only for a few industries. Those for the Asphalt Shingle and Roofing and for the Steel Castings industries have been analyzed in the case histories set forth in Appendices A and B above. Those for Electrical Manufacturing, Fertilizer, and Coffee, which were used at the respective trade association offices, served as the basis for reports independent of this study, but some of the evidence obtained from these filings has been incorporated.

In addition to primary source materials, such as memoranda, correspondence, and transcripts, extensive use has been made of certain of the Code Histories written under the Division of Review and of preliminary reports of industry studies. Material from previous reports of the Division of Research and Planning and of the Consumers' Advisory Board, and the Federal Trade Commission report on Open Price Associations has also been utilized.

Field interviews were restricted to only two of the industries in the sample, Asphalt Shingle and Roofing and Steel Castings. However, partial reports of field work done in connection with other studies have been made available to the Unit, specifically for the Electrical Manufacturing, Fertilizer, Coffee, Salt Producing, Paper Distributing, and Agricultural Insecticide and Fungicide Industries. In none of these instances was there any detailed coverage of the experience with open price filing, nor any general contact with industry members.

Some interviews were also made for this study by the NRA Field Division. A series of questions was prepared by the Unit, which the field staff submitted to former local code authority officials of those industries which had been organized on a regional basis. These interviews covered eighteen industries, only seven of which were in

the code sample. Returns from 196 interviews were reported. A typical questionnaire, for the Crushed Stone, Sand and Gravel and Slag Industry, is included below. (*).

Two other questionnaires were sent out in connection with the study. (**) One of these was addressed to persons that had been cited to the NRA Compliance Division for some violation of the Code provisisions on open prices. The mailing list included all names on the Compliance face sheets for the period between August, 1934, and May, 1935, except that a maximum of 25 names was circularized for any one industry. These names were those of alleged violators; the inclusion of a name on a list did not signify that a violation had actually occurred. It was hoped through these questionnaires to obtain first-hand information concerning the reasons for non-performance and non-compliance with the price filing requirements. The returns were scanty in number and contained little information of value.

A second questionnaire concerning the operation and effects of price filing plans was mailed in January, 1936, to secretaries or executive officers of former Code Authorities for some 330 codes which contained price filing provisions. For administrative reasons, the mailing list was limited to representatives of code authorities for those industries not otherwise contacted by the Division of Review, and hence did not include many of the more important open price codes. Also excluded from the mailing list were those industries which it was known had not put their filing plans into effect.

Approximately 70 replies were received, many of which contained useful data, chiefly in respect to mechanics and to performance under price filing plans. These have been incorporated at various points in the report.

(*) See pages 748 - 752.

(**) Copies of these are included below.

QUESTIONNAIRE TO LOCAL AND REGIONAL CODE AUTHORITIES

CRUSHED STONE, SAND AND GRAVEL, AND SLAG INDUSTRY
(Applies to State, Regional and District Committees)

A. General

1. Name and address of Committee.

2. Name of person interviewed and former connection with Committee.

3. How many concerns were under the jurisdiction of this Committee?

4. How many concerns voted in the last election for membership on the Committee?

5. How often were meetings held by the Committee?

6. Where are the records of the Committee and are they available for inspection by representatives of the National Recovery Administration?

B. Compliance.

1. How many complaints were received on trade practice violations from sources outside of the Committee itself? How many labor complaints?

2. How many trade practice complaints of violation were initiated by the Committee or its representatives? How many labor?

3. Describe briefly the procedure used in handling complaints.

4. Was it customary to inspect members' payrolls and other records at periodical intervals? Was it done in all cases when complaints were charged against members? If not, how often? What action was taken if members objected to such inspection?

5. Was restitution always demanded for adjustment of labor violations? What was required for violations of maximum hour provisions? How much restitution money was collected by this Agency? What disposal was made of this money? Was restitution required for all employees affected by violations or only for complaining employees?

6. In cases of trade practice violations what type of adjustment was required in order to consider a case satisfactorily adjusted?

7. Was the respondent always given the opportunity of a hearing? If so, before what body? What notice of the hearing was given to the respondent? How was the hearing conducted? Was it open or closed? How were the charges presented? Was the identity of complaining employees withheld from the respondent? Of other complainants?

8. How many labor and trade practice cases were referred by the Committee to the National Code Authority? How many to State NRA Office?

9. Estimate for both trade practice and labor provisions the degree to which compliance was secured. Rate as excellent, fair, poor, complete breakdown.

10. With what code provisions did compliance breakdown completely? To what do you attribute this breakdown?

11. Did the agency have the services of any paid staff for compliance work? How many persons were employed? What compensation did they receive? Were they authorized to settle complaints without the approval of the agency? Were the funds available for compliance work adequate?

C. Relationship with Other Agencies

1. Was this Committee adequately informed of code developments by the National Code Authority?

2. On what matters did the Committee exercise discretionary powers? (Explanations? Interpretations? Exceptions? Collection of statistics? Collection of assessments?)

3. On what matters did the Committee report regularly to the National Code Authority?

4. What were the most common criticisms of this Committee by members of the Industry?

5. Did this local Agency have the benefit of Trade Association funds and the use of Trade Association staff?

D. Price Filing

1. What considerations led to the establishment of the price filing provision within your District? If none was so established, what considerations made it seem unnecessary or impractical to have price filing?

2. What special difficulties did you have in the administration of the price filing plan? To your mind, was there any possible solution to these difficulties?

3. What specifically were the difficulties which arose out of the Executive Order 6767 permitting 15% reduction on government contracts? How did you meet these difficulties?

4. What complaints or protests, if any, were raised because of the fact that filings were disseminated only to members selling within the District?

5. How quickly was it possible for the District Committee to issue the filings, that is, get them into the hands of members?

6. Give an index or estimate of the extent to which customers availed themselves of the privilege of inspecting the filed prices.

7. Do you think that the requirement that five days must elapse between filing and effectiveness of price prevented temporary price cuts? Was this provision evaded in any way? How?

8. Did the ability of all competitors to meet the lowest filed prices act to discourage or eliminate price cutting? Give any evidence you have on this point.

9. Give any index or estimate of the extent to which members in your region complied with the price filing provision.

10. What procedure was followed in drafting rules and regulations relating to price filing, terms and conditions of sale; that is, by whom were they drafted, with what committee or administrative (NRA) assistance or collaboration, etc? (Note to interviewer: Please ask for a copy of all rules and regulations relative to price filing issued by this agency).

11. Give an index as estimate of the extent to which members in your District complied with the price filing provision. To what was any failure (1) to file or (2) to sell at filed prices principally due? Many small competitive units? Lack of standardization of product or service? Disturbance of ordinary distributive or customer relationship? Was the failure to sell at filed prices open or through indirect rebates, secret concessions, etc.?

12. To what purpose, other than price publicity, were you able to put price filings? To furnish statistical information to the Code Authority? Would you consider price filing desirable even if there were no dissemination required? Why?

13. What protests did you receive concerning either the price filing plan itself or its administration? Were any protests directed specifically at the use of a District organization in the administration of the plan? If so, in what respect? Do you prefer an industry organization to receive price filings or an independent one? Why?

14. What differences have come to your knowledge between your practices and experiences and those of other Districts, in relation to the price filing provisions? To what do you attribute these differences?

15. Did the open price provision in your code meet the peculiar conditions in your Industry? If not, in what respects did it fall short of a satisfactory approach to your problem?

E. Capacity Control

1. For those states of the division in which permissive areas were approved by the Administration:

   a. How many applications were there to increase capacity? What was the type and amount of capacity involved? Did it represent recently constructed equipment or equipment to be moved from some other place?

   b. In addition to formal applications, what other proposals were there to introduce new capacity which did not reach formal application? Why not?

   c. What disposition was made of the formal applications? Granted? Withdrawn? Denied? Did all those who were granted permission use it? Upon what basis were decisions reached to grant or recommend to the Code Authority denial of applications?

d. Were any of the applications made by members with a view to being "bought off"? Had this practice existed in the area prior to the Code? If so, describe when, and extent.

e. What difficulties, if any, arose because of competition by operators outside of the permissive areas, or by contractors or others within the permissive area, who did not come under this provision of the code?

f. What has been the effect of the abandonment of the code provision on the introduction of new capacity?

g. What is the present opinion in the industry with regard to the wisdom of the code provision regarding capacity control?

2. For those parts of the division in which permissive areas were not approved by the Administrator:

a. Was there any demand for the establishment of a permissive area? On what grounds?

b. Describe efforts to establish a permissive area and explain obstacles and reasons why this was not done.

E. Geographic Relations

1. Pre-code period

a. Approximately how many stationary plants and how many portable plants were located in your district? How did each group quote prices; f.o.b or delivered? Was this a uniform practice for all plants, for all plants of one type, and for all products? If not, what variations were there? Did producers take advantage of Code provisions which enabled them to meet competition prices and terms of sale?

2. Code period

a. Did the district committee adopt uniform rules for the filing and quoting of prices? If so, were they f.o.b. or delivered, or did the committee leave it optional? If no mandatory method was adopted, what terms were customarily used by the different producers? Did these apply to both portable and stationary plants? To all products? Did these represent a shift from pre-Code practice? Why was the change made?

2b.

a. Were products shipped into your market from distances which you consider excessive? If so, cite illustrative cases. How were such product shipped - by railroad or truck? What proportion of the products sold in your market came from an excessive distance? Were the products shipped on an f.o.b. or delivered basis? If shipped "delivered" was the price realized at point of shipment less than the price realized on sales in the normal marketing area of shipper? Explain.

b. Did producers in your market ship products beyond their normal market? If so, cite illustrative cases. What proportion of gross tonnage produced in your area was shipped excessive distances? How were such products shipped - by railroad or truck? Were such shipments made on an f.o.b. or delivered basis? How much of such product was "dumped" into other market areas (that is, sold at a price which net the shipper less than he received for his product in his own market)? When products were dumped into other markets, cite any illustrative cases which show freight absorption or price cutting below shippers price in home market.

c. Were sales outside of normal marketing areas more frequent or less frequent during the code period than during the pre-code period? Give reasons? Than during the post code period? Give reasons.

F. Misrepresentation and Deception

1. Prior to N.R.A. were any of the following practices disturbing factors to your industry: Inaccurate advertising, price misrepresentations, or misrepresentations of competitive goods, etc.? What efforts were made to curb these practices? With what success? Specifically, did the industry seek the cooperation of the Federal Trade Commission, and if so, with what success? Did your N.R.A. code provisions concerning misrepresentation and deception serve effectively to check the practices? If not, what principal difficulties of enforcement were encountered? Did you have a definite procedure for collecting evidence of violation preliminary to making the formal charge? If so, please explain in detail what this procedure or procedures was.

DR-14 Confidential Government Report File No.

Return to: NATIONAL RECOVERY ADMINISTRATION
Division of Review,
Washington D. C.

* * * * * * * *

QUESTIONNAIRE ON EXPERIENCE WITH OPEN PRICE PROVISIONS

We desire to make our studies on the operation of the National Recovery Administration as complete as possible - indicating both sides of the difficulties which were involved. In this regard, the views of persons who were not in agreement with certain activities are just as important as the views of those who favored them. We understand that you either disagreed or had a misunderstanding with the code compliance agency regarding the provision on open prices, so we would like to have your story - your side of the argument.

The information which you submit will be considered confidential and your name or the name of your firm will not be disclosed in our reports.

Name of Respondent_____ Date_____

Address_____ _____
(Street) (City) (State)

I. Indicate (✓) the total volume of sales for this establishment in 1934:

☐ Under $25,000
☐ $25,000 to $100,000
☐ $100,000 to $500,000
☐ $500,000 and over

II. A. (✓) Check one or more of the following to indicate the subject of your disagreement or misunderstanding with the Code Authority:

☐ Failure to file, post, or publish prices as required
☐ Selling at prices lower than filed prices
☐ Failure to file complete data on prices
☐ Failure to observe prescribed terms and conditions of sale
☐ Filing prices which were allegedly below cost
☐ Failure to follow customer classification
☐ Others (specify)_____

B. Indicate (✓) in what manner you were notified of the above condition.

☐ By mail
☐ By telephone
☐ By direct personal contact
☐ Other (specify)_____

C. Indicate (✓) who filed the original complaint resulting in the disagreement:

☐ Competitor
☐ Code Authority
☐ Other (specify)_____
☐ Do not know

D. Were you requested to appear before Code Authority for a hearing? ☐ Yes; ☐ No.
If yes, did you appear? ☐ Yes; ☐ No. Before what committee?_____

III. Indicate (✓) whether your disagreement resulted from:

☐ Specific open price provisions embodied in the Code
☐ Rules or regulations on open prices formulated by the Code Authority

If your disagreement on open prices was due to the rules or regulations formulated by the Code Authority, please answer the following:

A. Had you been informed of the rules or regulations formulated by the Code Authority on open prices before the complaint was made against you? ☐ Yes; ☐ No. If yes, please state:

1. In what manner were you informed of the rules or regulations formulated by the Code Authority on open prices (✓):

☐ By Mail
☐ By telephone
☐ By direct personal contact
☐ Other (specify)_____

2. Approximately how many days after you were informed of these Code Authority rules or regulations on open prices, were you notified of the complaint made against you?_____days.

IV. Indicate (v) below, how your case was disposed of:

- ☐ You agreed to comply
- ☐ Blue Eagle withdrawn
- ☐ Case pending on May 27, 1935
- ☐ Payment of fine
- ☐ Case was dropped by Code Authority or NRA
- ☐ Other (specify)_____

A. Did the Code Authority make any particular efforts to get you to comply? ☐ Yes; ☐ No. If yes, please explain the nature of the efforts.

V. Indicate (✓) below, what you think was the real reason for the complaint against you:

- ☐ Misunderstanding on part of person making the complaint
- ☐ Misunderstanding on your part
- ☐ Conflict over Code jurisdiction
- ☐ Complaint was intended to get you to comply with other Code provisions or Code Authority regulations not directly related to price filing
- ☐ Complaint was intended to get you to follow some price or other policy of Code Authority or of dominant members of the Industry
- ☐ Others (specify)_____

VI. A. Would compliance with the Code or with the Code Authority regulations have made it necessary for you to change your: (Use Check)

- ☐ Customary prices
- ☐ Customary quantity discounts
- ☐ Customary allowances (advertising, etc.)
- ☐ Customary terms of payment
- ☐ Customer classification
- ☐ Other terms and conditions of sale (specify)_____

Please explain briefly, what changes would have been necessary.

B. Approximately how long had you observed such terms or conditions of sales prior to to the time the complaint was made? _____ years

VII. Would you have preferred to file prices with some agency other than the one designated in Code for receiving and distributing prices? ☐ Yes; ☐ No. If yes, state what agency._____

VIII. A. Were the price filing provisions being generally observed in your marketing area by some members and ignored by others? ☐ Yes; ☐ No. Explain briefly._____

B. Were you influenced in non-compliance by the belief that your competitors were not complying with the price provisions of the Code?

IX. Would you have been more inclined to comply with the open price provisions of the Code if they had been different in some respect? ☐ Yes; ☐ No. If yes, indicate below (✓), in what respect you think the open price provisions should have been changed:

- ☐ Range of products for which prices were to be filed
- ☐ Waiting period before revised prices could be effective
- ☐ Filing of prices on past transactions as opposed to filing prices which were currently offered
- ☐ Identification of seller in filing
- ☐ Others (specify)_____

Please explain the nature of the change, and give reasons.

X. Were you, at the time the complaint was made against you, a member of the Trade Association which sponsored the Code? ☐ Yes; ☐ No.

Please feel free to attach any comments you may wish to make.

D-R-24 Confidential Government Report File No....

DEPARTMENT OF COMMERCE

Office of the National Recovery Administration
Washington, D. C.
****

QUESTIONNAIRE ON OPEN PRICE FILING AND MISREPRESENTATIVE PRACTICES

Realizing that you may not have precise information on many of the following questions, we are requesting your informed opinions.

Your cooperation in filling out this schedule will be of material assistance in our study of open price filing and misrepresentative practices.

Name_____ Date_____

Address_____

Code reported on (reportion one only)_____

SECTION I - OPEN PRICE FILING

1. Date of first filing of prices under the Industry Code. (Month, day and year)_____
2. Annual dollar sales volume of this Industry-1934(rough estimate).$_____
3. a. Did price filing apply to all products under this Code? Yes : No. If no, please answer the following:
   b. Approximately what percentage of the total dollar sales of this Industry was subject to price filing?_____%
   c. List the products or kinds of products of this Industry which were excluded from the price filing requirements.

4. a. State the total number of members in this Industry during 1934 (estimate)._____
   b. Estimate what per cent of the total members filed prices as required by the Code during:
      First half of price filing period._____%
      Second half of price filing period._____%
   c. Estimate what per cent of the total dollar sales of this Industry was represented by the members who filed prices during:
      First half of price filing period._____%
      Second half of price filing period._____%
5. a. In addition to prices, what terms and conditions of sale were ordinarily filed by members of this Industry.

   b. What other information was ordinarily (i.e. sales and production data, names of distributors or customers, etc.)

6. a. Indicate ( ) in what form prices were filed by members of this Industry:

List prices with discounts
Discounts from Industry gross or master list prices
Base prices with extras
Net prices to various classes of customers
Other (specify)_____

_____

b. List the classes of customers of this Industry (jobbers, wholesalers, dealers, etc. for which prices were ordinarily filed.

c. List the classes of customers of this Industry for which prices were not ordinarily filed.

7. a. Indicate ( ) the methods actually used in the dissemination of the price information to members and customers of this Industry

Method of dissemination of price information	To members of this industry	To customers of this industry
Mailed upon request, without charge.....	.....	
Mailed upon request, at cost.....	.....	
Mailed regularly, without charge.....	.....	
Mailed regularly, at cost.....	.....	
Available for inspection only.....	.....	
Direct exchange among members.....	XXX	
No dissemination of price information...	.....	
Prices available to customers of same classification only.....	XXX.....	
Prices available only to member in direct competition.....	.....	XXX
Other methods (Specify_____	.....	
_____.....	.....	

b. Please explain briefly to what extent customers availed themselves of the opportunity to inspect or request prices?

8. a. Were prices ordinarily filed on: Delivered basis: F.O.B. basis
b. If on an F.O.B. basis, did price quotations apply: Nationally: Regionally.

9. a. Were prices filed:
With one National agency and disseminated nationally
With Regional agencies and disseminated regionally.
b. If filed on Regional basis, how many regions were established?____

10. a. Did distributors, not members of this Industry, file prices with the filing agency for this Industry? Yes: No.
b. If no, did distributers ordinarily adhere to manufacturers suggested resale prices?

11. a. What benefits did proponents of the Code expect to obtain by establishing an open price system?

b. Please explain how the proponents of the Code expected the open price system to achieve the above benefits?

c. What is your opinion as to the extent to which these expected benefits were actually realized?

12. What effect, in your opinion, did the operation of the open price system in this Industry have on the following:

a. Level of prices - higher or lower.

b. Extent of price uniformity among competitors.

c. Degree of price steadiness as contrasted with frequent and abrupt changes.

d. Relative competitive position of industry members.

e. Relative competitive position of classes of buyers.

13. In your opinion to what extent was the publicity given to prices and terms of sale (as distinguished from other code provisions such as "no selling below cost") responsible for the effects which you stated in question 12.

14.a. What were the principal difficulties experienced in the effective operation of the open price system?

b. How might they have been remedied?

15. What is your opinion of the value of a price filing system in which the filing of prices by members would be voluntary, as a means to a more stabilized price structure in your Industry?

SECTION II - MISREPRESENTATION

16. Indicate ( ) which of the following kinds of misrepresentation and others, were a serious problem in this Industry before the N.R.A. code. Also indicate ( ) whether such misrepresentative practices were still of a serious nature during the code and after the code.

Kind of misrepresentation	Before Code	During Code	After Code
Deceptive advertising.....	.....	.....	.....
False marking or branding.....	.....	.....	.....
Deceptive packaging.....	.....	.....	.....
Other (specify)_____.....	.....	.....	.....
_____.....	.....	.....	.....
_____.....	.....	.....	.....
_____.....	.....	.....	.....
_____.....	.....	.....	.....

a. Please explain briefly the nature of the above practices which were or are a serious problem to this Industry during any of the above periods.

17. Did the provisions in your Code prohibiting misrepresentations serve materially to lessen the prevalence of practices of the kind which you have indicated in question 16.

18. Was the Code Authority able to obtain compliance with such provisions without recourse to N.R.A. enforcement?

19. What were the chief obstacles encountered to effective functioning of the Code provisions concerning misrepresentation of the kind you have indicated in question 16?

E. Statistical Program for the Price Filing Unit

The statistical projects of the Price Filing Unit included analyses of the price filing of only two industries - Asphalt Shingle and Roofing and Steel Castings. These studies were based in large part on a comprehensive outline for statistical analysis, prepared by the Unit as a basis for intensive studies of price filing experience in separate industries. This outline covers subject matter, methodology, and material specifications for such statistical studies below. An outline for briefer inspection studies is included:

Outline of the Statistical Program
for the
Price Filing Unit

Subject Matter

The following outline is meant to suggest various questions which the Price Filing Unit of the Trade Practice Studies Section wishes to have answered, so far as practicable, by the intensive statistical studies of particular industries. It is not expected that the outline can be followed in exact detail by any particular study; on the other hand, it should suggest certain questions which each can answer in some fashion or to some degree, if not in the form indicated by the outline.

ECONOMIC AND ADMINISTRATIVE EFFECTS OF OPEN PRICE FILING

I. Effect on Prices:

A. Uniformity

(1) Direction of price changes in achieving uniformity.

(a) Where does the greatest degree of uniformity occur - at the top, middle, or bottom of the price range?

(b) Is there any evidence showing relationship between such uniformity and collusive activity of one kind or another?

(2) Has publicity re: price differentials to different classes of customers led to changes in these differentials?

(a) Through uniform treatment by members?

(b) Through pressure from less favored groups? If so, what kind of pressure?

(3) Has open price activity caused alterations in the price status of competitors?

(a) Through customers learning of cheaper sources of supply?

(b) Through actual changes in the relative prices of members in meeting competition?

(c) Through shifting of customer preference under existence of uniform prices?

(d) Have these developments (if present) brought about changes in the respective volume of competitors' sales?

(4) Are variations in price due to -

(a) Lack of standardization of products?

(b) Advertised and non-advertised brands?

(c) Large and small members?

(d) Integrated and non-integrated members?

(e) Location - East and West?
(List suggestive but not exhaustive)

(5) Have previous price differentials disappeared -

(a) Between large and small members?

(b) Between different areas?

(c) Between advertised and non-advertised brands?

(d) Between inferior and superior quality goods?
(List suggestive but not exhaustive)

(6) What has been the effect of the clause allowing the meeting of competition?

(a) Has competition been met at the mill or at destination?

(b) Is this a change from previous practice?

(7) Has the tendency toward list price uniformity been offset by a growing lack of uniformity in terms or conditions of sale, in service, or the quality of the products?

(8) Has a tendency toward uniformity in terms and conditions of sale under open price filing led to more frequent changes in the list price of products than formerly?

(9) Are prices showing a tendency toward uniformity for products sufficiently standardized to justify such a tendency?

(10) How early did "uniformity" occur?

(a) Were the prices first filed under the Code uniform?

(11) Is there a tendency for manufacturers with incomplete lines to sell at lower prices?

(12) Is there any relationship between trends in the dispersion of competitors' prices and trends in prices?

(13) Is there any relationship between trends in the dispersion of competitors' prices and the frequency of price changes?

(14) Breakdowns and over-all comparisons (this list is merely suggestive and not exhaustive)

(a) What types of open price systems have been most effective in bringing about uniform prices?

1. With or without waiting period.

2. Data filed:
   a. prices only.
   b. more complete data (production, sales, stocks, etc.)

3. Methods of collection and dissemination.

(b) What relationship has administration of the open price system had to its effectiveness in promoting price uniformity?

1. Types of administration.
   a. By Code Authority.
   b. By Confidential Agent.
   c. By Trade Association Secretary.

2. Efficiency and sincerity of administration.
   a. Very efficient.
   b. Moderately so.
   c. inefficient.

(c) What effects has combination with other price provisions had on the effectiveness of open price filing in promoting price uniformity?

1. With minimum price.

2. With production control.

3. With cost provisions.

4. Other provisions such as to freight, cash terms, etc.

(d) In what types of industries have open price provisions been most effective from the standpoint of promoting price uniformity?

(e) What effect has pre-code price filing experience had on effectiveness in establishing price uniformity under open price codes?

(f) Other similar comparisons would be -

1. Mandatory vs. Voluntary O.P.F. schemes.

2. Codes affected by O.M. 228 vs. those not affected.

3. Plans with and without customer indentification.

4. Those with and without seller indentification.

5. Codes which exempted certain members vs. those which did not.

6. Codes where members were permitted to meet the lowest prices filed vs. others without this provision.

7. On the basis of the area of price uniformity.

B. Rigidity and Flexibility

(1) Frequency

(a) Has open price activity affected the frequency of price changes? If so, how?

(b) What has been the effect of waiting periods on the frequency of price changes?

1. Does existence of a waiting period deter the tendency to revise prices downward?

2. Have upward changes been more frequent than downward changes under open price codes?
a. With waiting periods?
b. In general?

(2) Amplitude

(a) Has open price activity affected the amplitude of price changes? If so, how?

(3) Relationship between Frequency and Amplitude

(a) Has open price practice affected the relationship between the frequency and amplitude of

1. What is the relationship between the duration of a filed price and the magnitude of a succeeding change?

2. What is the influence of the magnitude of the initial price change on the frequency and amplitude of succeeding changes?

3. How does the general trend or direction of prices affect the frequency and amplitude of price changes?

   a. What is the relationship of this to the fact that upward or downward changes were found to be most frequent? (See (b), 2, under "Frequency" above.)

(4) Miscellaneous

(a) Do price changes follow changes in volume of production or volume of sales as closely as under a secret price system?

(b) Effect of price stability on business volume and profits?

(c) What is the relationship between the stability of filed prices and the stability of trade discounts and other conditions of sale?

(d) Does the stability produced by open prices (if it occurs) extend to the price structure of other stages of the productive process, - i.e., is it reflected in more stable prices in the supplying and in the buying industries?

(e) What evidence is there of price leadership in the price changes?

1. Simultaneous changes after the plan was set up?

2. If not, order of changes by competitors?
   a. Principal competitors?
   b. Small competitors?
   c. On downward changes, does the changed price approach, meet or undercut a previously changed price?
   d. What happens on upward changes?
   e. Character of firms initiating price changes?
   f. Market covered by the new price?
      Part of company's old market?
      All of company's old market?
      A new market for which the company appears to be fighting?

(f) Rapidity with which filed prices were met?

1. Were refilings to meet upward changes more or less rapid than those to meet downward changes?

2. Relationship to general price trend?

(5) Breakdowns and Over-all Comparisons - (Similar to those listed under "Uniformity"; also additional ones pertaining especially to stability such as - (a) Codes covering one step in fabrication or distribution and effects of the Code provisions on the preceding or succeeding steps or stages.)

C. Level and General Direction

(1) Is there any evidence that filed prices bear a fixed relationship to a suggested cost floor, existing price agreement, or other established base?

(2) Relation of price movements to the time when effective price filing began or ended? Did price advance to any marked degree in anticipation of open price filing or immediately thereafter? Was there an immediate effect on price when open price filing was discontinued?

(3) Comparison of levels of comparable open and secret price groups during same period of time.

(4) Comparison of price levels for specific products during time open price system was effective with previous or later periods when it was not.

(5) Breakdowns and over-all comparisons:
Similar to those listed under "Rigidity and Flexibility" and "Uniformity".

II. Effects of Open Price Filing on Production, Sales and Employment

A. Has a waiting period (especially in the durable goods industries) operated to prevent greater production and greater employment?

B. Have open prices resulted in larger or smaller inventories? Have they led to a change in the size of individual orders through more rigid classifications of discounts and trade factors or simply because of the publicity accorded to such discounts and the fact that they can be obtained by any customers qualifying?

C. Question of the reaction of potential equipment and capacity in the Industry under open price practice:

(1) Have new increments of supply appeared?

(2) Are these due to new units in the Industry or expansion of existing units?

III. Effects of Open Price Filing on Consumption:

A. Has open price activity in certain industries resulted in the diversion of sales to substitute products?

(1) Has mere openness of prices encouraged undercutting on competing products?

(2) What has been the relationship between changes in filed prices and the movements of prices of important substitutes?

(3) What has been the relationship between sales of "principal" and "substitute" products?

(4) Question of the reaction of potential equipment in the "substitute" industries.

(a) Have new increments of supply appeared?

(b) If so, are they due to -

1. New Units in the Industry?

2. Or increased output of existing units?

B. The problem of the general effect of open price filing practice on consumers.

(1) Has it resulted in higher prices to them?

(2) If so, are these higher prices to consumers offset or justified by the other general effects of open price filing?

IV. Effects of Open Price Filing on the Competitive Structure of Industry

A. Has the failure of the Code to include middlemen under the jurisdiction of the Code proved discriminatory against members performing their own distributive functions?

B. Is there any evidence that open price plans alter the focus of price leadership in the Industry? That is, from the small unit to the dominant producer, or vice versa? Does it, on the other hand, strengthen the influence of a former price leader?

2. METHODOLOGY

(For detailed suggestions regarding Subject Matter and Material Specifications, see the separate outlines on these two subjects).

The general supposition on which this outline is based is that the final, complete report on each intensive study of price filing in a particular industry or under a given code will probably consist primarily of the following or similar divisions:

(1) An introductory section which will include a statement of the problem and a brief outline of the plan of attacking it.

(2) A summary of the information necessary to give the layman the background needed in order to understand the general character, organization and operation of the Industry.

(3) A summary of pertinent provisions in the Code of Fair Competition and a brief historical account of the negotiation of the Code, the source of any opposition, any controversies which arose, the members or sections of the Industry intered or affected, and the real or stated reasons for including the open price and related provisions in the Code.

(4) An exact, detailed description of the price structure and pricing practices in the Industry plus an explanation of how these have functioned.

(5) A detailed presentation of the results of the statistical analyses of the price filings together with a full explanation of the methodology used in obtaining these results.

(6) Conclusions on as many of the points listed in the Subject Matter Outline as it is possible to give in each case.

I. BACKGROUND KNOWLEDGE OF THE INDUSTRY:

A. General Character of the Industry:

(1) Size? Number of employees? Capitalization? Output? Sales? Capacity?

(2) Stage in the general industrial process?

(3) General importance in the industrial process? National importance?

(4) New or old Industry? General trend? Expanding or dying?

(5) State of technology? Extent of research and experimentation? Rate of obsolescence?

(6) Financial structure? Methods of financing? Finance as a control device? History of profits?

(7) Stable or fluctuating? If latter, cyclical? Seasonal?

(8) Complex or simple? Degree of integration?

B. Relationship to Other Industries:

(1) Character of the raw material market?

(a) Are the prices of the industry's principal raw materials flexible or rigid? Otherwise controlled?

1. Causes?

a. Nature of the supplying industry?
b. Elastic or inelastic supply?
c. Others.

(b) Nature of the prices of products or other industries using the same kinds of raw materials?

(2) Nature of the market for the industry's products?

(a) Are the prices of good manufactured from the industry's products flexible or rigid? Otherwise controlled?

1. Causes?

a. Types of buying industries?
b. Are they confronted by an elastic or inelastic demand?
c. Others.

(3) Character of the Competition of this industry with other industries?

C. Nature of the Competition in the Industry:

(1) Approximate number of competitors within the Industry?

(2) Character of the principal companies?

(3) Representative large, small, and medium-sized firms?

(4) Relationship of these to each other? To the Industry as a whole?

(a) Any evidence of leadership?

(5) Competitive practices?

(6) Effects of business cycles and seasonal movements on the nature of the competition?

D. Products:

(1) Representative products of the Industry?

(2) In general, how they are made:

(a) Raw materials?

(b) Processing: How and to what stage?

(c) Finishing?

(d) By-products or joint-products?

(3) General character of the products selected?

(a) Degree of standardization?

(b) Patents?

(4) Uses:

(a) Where? For what? How? Extent of each use?

(b) Competitive or substitute products? Extent of substitution possible?

(5) Marketing:

(a) General character of the market?

(b) Methods of distribution? Favored or usual one?

(c) Sensitivity of demand?

(d) Nature of the competition as it affects the particular products selected?

II. Summary of the early Code History:

(See(B) of the introductory statement, Page 1 of this outline).

III. Price Structure and Pricing Practices:

In general, this section should include everything that is necessary to enable the research staff to determine the net prices received for the representative products of the selected companies.

Specifically, the following information is set forth as a guide to what is necessary; the various items will, of course, vary from industry to industry:

A. List Prices:

(1) Of what type:

(a) Standard established list prices with discounts and plus percentages?

(b) Quoted list prices? How quoted?

(c) Special schedules? and so forth.

(2) On what bases are the list prices?

(a) F.O.B., delivered basis, etc.

B. Discounts:

(1) Trade?

(a) Customer classification?

(b) Favored or usual method of distribution?

(2) Quantity discounts?

(3) Special discounts?

(4) Cash discounts? Rate? Net Period? etc.

C. Other terms and conditions of Sale:

(1) Deferred payment plans?

(2) Rental plans?

(3) Other credit plans, terms, etc.

If possible, it would probably be quite helpful to set up charts showing the changes, if any, in the various elements of the price structure during the Code period (Contrast the situation at or near the beginning with that at the end of the period).

IV. PRELIMINARY ANALYSIS OF THE PRICE FILINGS:

A. Selection of representative products and companies.

B. Collection and consolidation of all price filings (for the products and companies selected) in NRA files. This step will not be necessary except for the studies on Steel Castings and Asphalt Shingle and Roofing.

C. Listing of all price filings on the selected products by representative companies and by dates (where the filings are numbered consecutively, as in the case of Steel Castings, this listing is not necessary inasmuch as it is possible to determine whether or not the filings are complete without it. Neither is it necessary in the case of the Electrical, Fertilizer, and Coffee studies).

D. Checking with the Code Authority in order to locate and fill in any gaps in the filings in NRA files for the companies and products selected.

E. Show for individual companies the list prices and discounts for the various classes of customers.

F. Determine the net price (or the nearest possible approach to it) received for each product by each company for different customer classifications, different quantities sold, and different credit terms, etc.

(1) At the time of original filing and

(2) Near the close of the Code period.

The procedure under F will vary considerably from industry to industry since the price structure and practices of each are usually different in a number of important respects.

Where possible, it will undoubtedly be helpful, at this point, to set up charts showing the following:

(1) The net prices to various classes of customers by individual companies (1) at the beginning and (2) end of the Code period.

(2) The same for each customer classification, including all selected companies.

(3) The list and net prices for the various quantity groupings for the same periods or dates as in (1) above and by companies.

In some cases, figuring the net price for a hypothetical standard transaction may prove to be a useful device, especially when actual volume figures are not available.

V. BASIC ANALYSIS OF THE PRICE FILINGS:

A. Utilizing the results of Sections III and IV, it should be possible at this stage to make comparisons and tests to answer the following questions:

(1) Was there an increase or decrease in the Uniformity (as among competitors) of net prices during the code period?

(a) If so, which of the following price elements changed, in what way, and with what effects?

1. List prices

2. Discounts

3. Other terms or conditions of sale

(b) Which element (1,2, or 3) was chiefly responsible for any changes in net prices?

In this connection, it should be possible to compile a "Running Account" or "Calendar of Changes" in List Prices, Discounts, and other Terms which will indicate the nature of changes during the code period, the reasons for the changes (such as to meet competition), etc.,

(2) Did net prices tend to become more or less flexible during the code period?

(a) Were changes more or less frequent?

(b) Did the magnitude of the changes become greater? or less?

(c) Which of the price elements mentioned under 1, (a) above, was chiefly responsible for the changes?

(d) Was there any change in the apparent relationship between the frequency and magnitude of the changes?

(3) What was the general trend or direction of net prices during the code period? Of each of the price elements?

(a) Which of the price elements was chiefly responsible for the trend in net prices?

(b) How significant is any trend which may be discovered in net prices?

(1) Has the Industry been giving the consumer more or less value per dollar?

2. How does the value given compare with that in other similar industries?

(4) In some cases, where the necessary quantity figures are not available, it may only be possible to establish the upper and lower limits within which the net price falls. This range, however, should afford something in the way of answers to most of the questions listed above.

VI. SECONDARY ANALYSES:

Note: These analyses are termed "secondary" only in the sense that they are to be derived chiefly from the results of the basic analyses under V above. These results (with respect to price uniformity, Flexibility, Level and General Direction) should, when subjected to further purposeful analysis, yield much of the information necessary to answer some of the important questions listed in the Subject Matter Outline for these studies (See "Outline of the Statistical Program for the Price Filing Unit, Subject Matter"). The sections on breakdowns and over-all comparisons, will, of course, have little significance for single studies except in the case of the more complicated industries, such as Electrical Manufacturing, where some 20 or 25 different products will be studies).

Many of these questions can be answered largely by carful inspection of the results obtained under Section V. For example, the "Running Account" or "Calendar of Changes" should afford some evidence regarding price leadership, the rapidity with which filed prices were met, direction of the changes in achieving uniformity, how early uniformity occurred, etc.

Other questions will require further statistical analysis, including the introduction of supplementary data and information. Thus, in any cases where price filing has apparently exerted considerable influence on the price of a product, secondary effects may show up in the form of new increments of supply, increased employment, changes in consumption (including shifts to substitute products), alteration of the status of particular competitors or groups in the industry or market, etc.

In other instances, certain open price code provisions or administrative practices may appear to have exerted considerable influence more or less directly upon competitor relationships and the competitive structure of the industry.

The problem here will be to determine the relationship, if any, between such price changes, code provisions, or administrative practices and the changes noted in production, consumption, sales, or other phases of the industrial set-up. The exact methodology will probably vary considerably, from case to case. Where sufficient data adapted to the purpose are available, some type of correlation analysis may be useful; otherwise, more general information will have to suffice.

PRE-CODE AND POST-CODE ANALYSES

It is assumed that wherever possible the analyses outlined for the code period will be extended into the pre-code and post-code periods in order to obtain a better picture of the influence of the code on the industry, especially on prices and pricing practices.

REGIONAL COMPARISONS

It is also assumed that, wherever relevant, comparisons will be made between representative regions in those industries which have a regional set-up.

(Material Specifications)

Master List of Materials Needed

This list is given as a general guide to the data and other information needed in order to follow the Methodology and Subject Matter outlines of the Statistical Program. The exact materials needed will, of course, vary considerably from one individual to another.

I. Effects on price:

The principal materials needed for statistical study of the effects of open price filing on price are the data necessary for the computation of net prices; ordinarily this includes the list prices, discounts, and other terms and conditions of sale for each company and for each customer, quantity, or other classification used in marketing the products selected.

A. Uniformity:

1. Reliable information regarding representative products under each code studied will usually be needed from experts on that particular industry. In some cases these experts may be found within NRA; however, in a good many cases it will probably be necessary to contact the Code Authority, trade association, or outside individuals especially well-informed about the products, their uses, and their market.

2. Reliable information regarding the size, competitive status, type, and representativeness of the competitors in the industry is also necessary in order to permit of their selection or proper classification in making the statistical analysis. In some instances this information is available from experienced and well-informed deputies, from industry studies, or others within NRA. For certain industries it will have to be secured from outside sources.

In most cases the information called for under 1 and 2 above, if not known, can be obtained by the members of the statistical staff themselves through studies of the industries. This will require considerable time, however, and since we may not receive much servicing from the Industry Studies or others during the early period when

we are forced to select representative products and companies, the logical short-cut is expert advice where needed on these problems.

3. Complete price filings or comparable price lists of all important competitors (in some cases of representative competitors), on representative products selected from each industry, for the code period.

Where possible, similar price series covering a pre-code period or periods (preferably all of 1929 and pre-code 1933) and the post-code months.

Where the filings are not numbered consecutively, it is impossible to tell if they are complete for each competitor without checking our list of such filings against the Code Authority's or trade association's complete list. This makes it necessary to contact the Code Authority at an early date for this information. The success and accuracy of the statistical analysis depends largely upon the completeness of the data; if certain price filings are missing, the conclusions drawn from the analysis may be very misleading.

The above step will, of course, not be necessary in the case of the Electrical, Fertilizer, and Coffee Studies.

Where the members of the industry filed by regions or zones, data are needed for representative competitors in each region or zone selected for study; it will also probably be necessary to obtain the prices filed by certain companies in several regions or zones where there are companies selling in more than one geographical division.

4. Information - statistical or otherwise, preferably the former - regarding discounts and other terms and conditions of sale. This information is the necessary complement of the data on list prices; until both are known it will be impossible to determine, in any precise manner, what happened to the prices actually paid.

This information should be obtained for each representative competitor and product and for each customer, quantity, and other classification used.

Where available, information as nearly comparable as it is possible to obtain should be secured for a pre-code period and the post-code months.

B. Flexibility or Rigidity:

1. In the main, the data listed under the material specifications for the study of price uniformity can be made to serve for the study of price flexibility or

rigidity. An analysis of the changes which took place in the net prices, list prices and discounts and other terms and conditions of sale of representative competitors will give a good indication of the frequency and extent of changes in the different price elements during the code period. If the necessary data can be obtained for the pre-code and post-code periods (see the third paragraph, Section 4, under "Uniformity"), it will also be possible to compare the frequency and extent of price changes before, during, and after the code period. The details of the analysis will probably vary considerably from one industry to another.

C. Price Levels and Trends:

1. Most of the conditions outlined under "Flexibility or Rigidity" above also apply to the study of the general direction and level of prices.

While in some cases it might be possible to combine the net prices (or values of the particular price element under consideration) of the various representative companies into one price series which would be representative of the industry and might be used in an analysis of price flexibility, level, or trend, it will probably not be feasible to attempt to do this in most cases. The question of weighting offers one very troublesome problem in this connection.

In most instances, the trend of prices for one or more representative companies should serve to indicate the trend for the industry; where this does not hold, there apparently is no well-defined trend for the industry as a whole.

it is assumed, of course, that the price trends for each customer, quantity, and other important classification will be determined for each representative company wherever possible. The further classification and comparison of these results should provide considerable information relative to general price trends in the industry.

D. Effect of Open Price Filing on Production, Sales, Employment, Consumption, and the Competitive Structure of the Industry.

An attempt to study the secondary effects of price filing and the more or less direct effects of certain administrative code provisions or Code Authority practices will call for the following data in addition to that mentioned in the preceding sections of this outline:

1. Production data (in some cases for the industry as a whole and in others for individual members if possible; for separate products for certain purposes and for all products for others).

2. Sales data on the same basis as 1. It may also be necessary to have information on stocks and / or inventories.

3. Figures on employment and / or payrolls for the entire industry; also probably for important individual members in some instances.

4. Information on the consumption of -

   a. The principal products being considered.

   b. Important substitutes.

5. Price data for the substitutes considered; this should probably be for the periods covered by the price data for the principal products with which the substitutes compete.

4. INSPECTION STUDY OF PRICE FILING

I. CHRONOLOGICAL INFORMATION

The first step in surveying a file of prices is to determine the order of time in which the filings were made, if any. (Arrangement of the files by companies is assumed.) At one extreme are those price filings which were filed only on certain dates, while at the other extreme are those price filings which do not appear to have any relation to specific filing dates, that is, they do not cluster about any given date.

What is the chronological nature of the available price filings? Did the filings cluster about certain specific dates (periodic) or were they scattered uniformly throughout the period in which price filing provision was in effect (non-periodic)?

A. Periodic Filing

The fact that prices were filed periodically does not, in itself, indicate why they were filed in this manner. Any one of a number of reasons may explain subsequent periods of filing after the first one.

After the first, what are the reasons which explain the subsequent periods of filing? That is, was the refiling due to reclassification of products, inclusion of new items, changes in the filing system, to make changes in terms or conditions of sale, to revise prices or discounts, or to meet competition, etc?

B. Non-Periodic Filing

A description of non-periodic filing involves special treatment for each case. An attempt should be made to classify the results in one or more ways.

What length of time was required for a complete first filing?

Does the classification of companies by certain types of products show any temporal relationship with respect to filing dates?

C. Frequency of Filing by Companies

Regardless of periodic or non-periodic filing, a set of files, when tabulated, may show, for example, 80 companies which filed once, 40 companies which filed twice, and 15 companies which filed three times.

What evidence does this chronological array indicate with respect to changes in prices, terms, conditions of sale, customer classification, etc?

II. THE MECHANISM OF PRICE FILING

Price filing assumed a great variety of forms with respect to the mechanism by which filing was achieved. Not only was the mechanism subject to a variety of forms among industries, but also it was often not uniform in many ways among members of an industry. This latter case is one of the methods whereby "net" price variations were actually achieved without altering other factors, such as, the "gross" price. The mechanism may have failed to provide for the filing of terms; half the companies filing price information may have filed their terms and the other half may have omitted this information.

In general, what does the available material indicate with respect to the nature of the mechanism of the system employed?

Was the information recorded on standard forms or on individual company price lists?

What was the nature of the variety of products involved?

A. The Form Used to Record Information

The nature of the form used to record the price filing information is of material importance in ascertaining the mechanism of the system. Where a degree of standardization among companies has been achieved with respect to the product, one might expect to find more often some standardization of price filing form.

Was the price information filed on standard forms?
Or was the price information filed in some non-standard manner such as individual company price lists?

B. The Nature of the Products

Price filing involves information relative to the product, such as the variety of the products, which is not "price" information, as such. The information is sometimes of such

a nature that the identification of the product for purposes of comparison is very difficult, if not impossible. In other cases this information is the key to any analytical attack.

What is the extent of the variety of the products?
What methods are used for identification or description?
Are product classifications used?
To what extent has product standardization taken place?

1. Variety of Products

Variation among products may exist either as a variation in the product among companies, or as a variation in the product within each company.

What variation in the product exists among companies?
What is the chief characteristic of the variation?
Design? Use? Patent? Trade Mark? Material Content?

Are there a variety of products within each company?
Is the variation according to design, (shape, color, size); or according to use, (Heaters: water heaters, fireplace heaters, etc.); or according to material content (Fire extinguishers; wet chemical, powder, etc.)?

To what extent does the variety extend throughout the industry?

2. Identification or Description.

The description or identification of a product may be achieved in a great many different ways. Some of these ways make the identification of the product among companies very easy; some of them are of little or no value in identifying the product among companies.

What are the methods used to identify the product?
Which are comparable among companies?

3. Product Classification

A more or less complete product classification is often applied to price filing. The extent of product classification is an important step in the analysis of price filing.

What is the nature of the product classification, if any?
To what extent is it uniform among companies?
What is the degree of refinement of the classification?
Is the classification an aid to identification of items?
Or is it obscure with respect to identification of items?

4. Product Standardization

The final step in uniformity with respect to the products of an industry is the degree of standardization. This standardization forms the basis upon which many trade practices ultimately rest. Obviously, uniformity in price is much more difficult to achieve in the case of non-standardized products than in the case of highly standardized products.

To what extent has product standardization taken place? What is the apparent relation of the product standardization to the structure or mechanism of the price filing system?

III. CHARACTERISTICS OF THE PRICE INFORMATION

The inspection of the mechanism of price filing by means of which price information was obtained, is one thing; the inspection of the characteristics of the information obtained is another.

The inspection of the characteristics of the information is not intended to be an analysis of the filings, but rather the discovery of the kinds of information that were obtained.

What kind of customer or distributor classification was used?
What kinds of prices were filed?
What kinds of terms and conditions of sale were employed?
What was the nature of the quantity classifications used?

A. Kinds of Prices Filed

A variety of methods were used to achieve the actual filing of prices, some of which were the prices themselves, discounts from a standard list price, minimum prices, etc.

What kind of price was filed?
Was the practice uniform among companies?
Was the price information filed comparable among companies?
Was it adaptable to statistical manipulation?

B. Customer Classification

Customer classification may or may not vary among companies. The chief characteristics are the kind of classification used and the degree of uniformity with which they were employed.

What kind of classification was used?
To what extent was it uniform among companies?

C. Quantity Discounts

Quantity discounts are so common that this form of altering the list price merits special treatment. The quantity classifications and the associated discounts are the chief characteristics of this kind of information.

Were the quantity classifications uniform for all members of the industry?
Were the discounts for the quantity classifications likewise uniform?
Were the quantity classifications comparable among the products of the industry? That is, was a 10% discount given on one dozen fire extinguishers, size one quart, by one company while another company gave a 10% discount on one dozen fire extinguishers, size one gallon?

D. Terms and Conditions of Sale

Terms of payment and conditions of sale involve a great variety of methods whereby the list price is altered. One list price for a single item may resolve itself into a large number of net price to various customers. Terms of payment and conditions of sale are largely determined by the policy of the industry as a whole and finally by the policy of the industry member. The customary treatment of these matters by the industry as a whole, often establishes precedent upon which the policy is based.

What are the terms of payment employed?
What are the conditions of sale? - The Sales Policy?

1. Terms of Payment

Did the sales policy involve:

a. Guarantees and similar provisions, such as,
Product guarantees,
Return of defective and damaged merchandise,
Allowance on obsolete and discontinued lines,
Price Guarantee,
Resale guarantee,
Repurchase guarantee,
Assuming liability for errors in plans, patent infringement, non-controllable factors, etc.
Other.

b. Additional goods, such as,
Free deals,
Premiums,
Samples,
Containers,
Labels,
Advertising,
Other.

c. Service, such as,
Demonstrating,
Estimating,
Installing,
Maintenance and reconditioning,
Warehousing and Storing,
Lending or leasing of equipment.

d. Financial assistance, such as,
Gifts,
Paying buyers' personal charges, etc.

e. Shipment, such as,
Split shipments,
Odd-Lot shipments,
Shipments less than specified minima,
Other,

f. Consignment goods,

g. Commissions and fees, such as,
To brokers,
To customers,

h. Allowance for service rendered by buyer, such as,
Trade-in allowance,
Label allowances,
Advertising allowances,
Catalogue allowances,
Cartage allowances,
Other,

i. Substitute or obsolete goods, such as,
Seconds,
Used goods,
Damaged goods,
Scrap,

j. Transportation charges, such as,
Basing points,
Warehouse sales,
F. O. B. Basis,
Freight equalization,
Sales in other zones below lowest F. P.,
F. O. B. basis, freight allowed,

k. Resale price, such as,
In relation to brokers or agents,
In relation to consignees,
In relation to customers,
Respecting maintenance of manufacturer's list price,
Minimum price,
Other,

3. Filing of Terms and Conditions of Sale

It will be impossible to say conclusively what were the actual terms and conditions of sale in most cases. Some of the terms and conditions of sale may have been filed uniformly by all members of the industry while other terms that were not filed by these members may have played an important part in determining actual price. The inspection can hope to show only the visible conditions in this respect, that may be observed from the files available.

To what extent were terms and conditions of sale filed by all members of the Industry? Did price competition apparently center about terms and conditions of sale?

Were statements confined to "announcements" or were they descriptive. For example, was a statement made that free deals would be given, or did the statement actually set forth the free deals to be given?

IV. APPRAISAL OF THE INSPECTION

Insofar as possible a comparison should be made of the original and the final filings. It is particularly important to observe changes which took place in the nature of the information files, especially with respect to uniformity or lack of uniformity that developed among the members of an industry.

The various individual characteristics that will probably appear in any one inspection should be noted and related to the material in the outline.

F. Suggestions for Further Research

The Statement of the Problem in Chapter II of the report reveals, in general, the limited scope of the present study and obviates the necessity for any lengthy discussion of future research at this point. Three specific suggestions can be made.

1. The series of individual case studies originally contemplated should be completed along the lines of the Preliminary Outline to afford further examples of "going" open price plans, and, more important, to lend a perspective to the descriptive and illustrative material utilized in the present study. Such case studies would offer a basis for comparative analysis far beyond what was possible in the present study.

2. The information assembled from NRA files should be supplemented by extensive interviews and questionnaire data from members of the industries participating in the Open Price plans. Lack of access to Code Authority records, and to the experience and reactions of industry members, was perhaps the greatest handicap of the present survey of price filing experience.

3. Intensive statistical analyses of price filings for other industries in the sample would afford further opportunity to check the suggested "tests" for evaluating the effects of price filing on an industry's price structure and competitive relations. Every effort should be made to extend those studies to a continuous record of price changes beyond the code period, both for those industries continuing price filing on a voluntary basis and for those abandoning price publicity. The absence of comparable pre-code price data, and the inadequacy of any current price series for such purposes, suggests that some provision for continuous collection and analysis of price quotations is a necessary part of any comprehensive survey of the effects of price filing.

Other trade statistics, for production, volume of sales, etc., are of course desirable for any such analysis. The statistical outline devised by the Unit, and included above, suggests the scope and detail for such a research program.

EXHIBIT II

Analysis of Price Filing Provisions Contained in NRA Codes

EXHIBIT II

444 OPEN PRICE C DES BY DIVISIONS, BY SIZE

ACCORDING TO NUMBER OF EMPLOYEES,

AND BY TILE OF CODE

OPERATION

DIVISION	MONTHS	A Over 250,000	B 100,000 to 250,000	C 50,000 to 100,000	D 25,000 to 50,000	E 10,000 to 25,000	F 5,000 to 10,000	G Under 5,000	TOTAL
	Over 18							2	2
	12 - 18	1		1		7	3	32	44
MANUFACTURING - 88	6 - 12					1	2	37	40
	Under 6							2	2
	Over 18	1			2	1	3	1	8
	12 - 18			2	2	8	3	31	46
EQUIPMENT - 112	6 - 12					2		48	50
	Under 6					1		7	8
	Over 18						1	1	2
	12 - 18	1		2	5	5	6	31	50
BASIC MATERIALS-68	6 - 12				1	1	1	10	13
	Under 6					1		2	3
	Over 18	1	2	1	1		1		6
	12 - 18				2	1	5	12	20
TEXTILES - 37	6 - 12					1	2	5	8
	Under 6							3	3
	Over 18		2						2
	12 - 18	2	1		3	1		6	13
DISTRIBUTING - 23	6 - 12				1			7	8
	Under 6								0
	Over 18						1		1
	12 - 18		1	2	1	6	1	30	41
CHEMICALS - 51	6 - 12					2		6	8
	Under 6							1	1
	Over 18		1						1
	12 - 18						2	5	7
FOOD - 31	6 - 12		1	3	1	3	3	10	21
	Under 6							1	1
	Over 18								
	12 - 18	1	1	1	1				4
PUBLIC UTILITIES-4	6 - 12								
	Under 6								
	Over 18								
	12 - 18								
CONSTRUCTION - 8	6 - 12	1					2	3	6
	Under 6							2	2
GRAPHIC ARTS	12 - 18	1							1
RECREATION	12 - 18						1		1

CLASS A CODES - OVER 250,000 EMPLOYEES

DIVISION	Over 18 Mo.	12 to 18 Mo.	6 to 12 Mo.	Under 6 Mo.
MFG.		Fabricated Metals		
Equipment	Automobile			
BASIC MAT.		Iron & Steel		
TEXTILE	Cotton Textile			
DIST. TRADE		Retail Solid Fuel		
		Wholesale Dist. Trade		
CHEMICAL				
FOOD				
PUB. UTIL..		Trucking		
CONSTRUCTION		Construction		
GRAPHIC ARTS		Graphic Arts.		

CLASS B CODES - 100,000 to 250,000 EMPLOYEES

MANUFAC.			
EQUIPMENT			
BASIC MAT.			
TEXTILE	Silk Textile		
	Wool Textile		
DIST TRADE	Builders' Suppl.	Motor Vehicle & P	
	Retail Lumber		
CHEMICAL		Paper & Pulp	
FOOD	Ice		Bakery
PUB. UTIL.		House. G.M.& ST.	

CLASS C CODES - 50,000 to 100,000 EMPLOYEES

MANUF.		Photog. & Photof.	
EQUIPMENT		Gray Iron Found.	
		Steel Casting	
BASIC MAT.		Copper Mfg.	
		Structural Clay	
TEXTILE	Underw.&A.P.		
DIST. TRADE			
CHEMICALS		Chemical Mfg.	
		Rubber Mfg.	
FOOD			Bottled S. Drink
			Canning Industry
			Cigar Mfg.
PUB. UTIL.		Motor Bus.	

NOTE; These tables are subject to error, for a number of reasons explained in the text. Until checked and made perfect, they are not to be published.

CLASS D CODES - 25,000 to 50,000 EMPLOYEES

DIVISION	Over 18 Mo.	12 to 18 Mo.	6 to 12 Mo.	Under 6 Mo.
MANUFAC. EQUIPMENT	Farm Equip. Oil Burner	Plumb. Fixtures Valve & Fittings		
BASIC MAT.		American Glassware Cement Concrete Masonry Copper & B Mill P. Crushed Stone S. & G.		
TEXTILE	Throwing	Carpet & Rug Rayon & Silk Dye		
DIST. TRADE		Ind. Sup. & Mach. Paper Dist. Trade Retail Monument	Retail Rubber T.	
CHEMICAL		Set-Up Paper Box		
FOOD			Candy Mfg.	
PUB. UTIL.		Mdse. Whole. Tr.		

CLASS E CODES - 10,000 to 25,000 EMPLOYEES

MANUFACT.		Bedding Dental Lab. Funeral Supply Lgd.&LO.Pr.Jewel. Precious Jewel Small Arms & Am. Toy & Plaything.	Elect.&Neon S.
EQUIPMENT	Boiler Mfg.	Am.Petroleum Eq. Anti-Friction Bear. Cast Iron Boiler Cooking & Heating Gas Appliance Metal Tank Printing Tr. Scientific Appar. Shovel, Dragline& C	Boatbuilding Drop Forging
BASIC MAT.		Asbestos Limestone Linen Import.Tr Refractories Wood Heel	Whol.Mon.Granite
TEXTILE		Hat Mfg.	Candlewick Bedsp.
DIST. TRADE		Outdoor Adv.	
CHEMICAL		Corrug.& S.F.S.C. Envelope Fertilizer Folding Paper Box Oxy-Acetylene	Loose Leaf & B.B. Pachage Medicine
FOOD		Preformed Plastic	Canned Salmon Whol. Confec. Whol. Tobacco

CLASS F CODES - 5,000 to 10,000 EMPLOYEES

DIVISION	Over 18 Mo.	12 to 18 Mo.	6 to 12 Mo.	Under 6 Mo.
MANUFAC.		Brush Mfg.	Optical Whol.	
		Bus. Furniture	Specialty Acct.	
		Porcel. Br. Furn.		
EQUIPMENT	Cast Iron S.P.	Gear Mfg.		
	Heat Exchange	Steam Heat. Eq.		
	Pump Mfg.	Warm Air Furnace		
BASIC MAT.	Lime	Asphalt Sh.&Roof.	Gypsum	
		Coal Dock		
		Floor & Wall C.T.		
		Vit. Clay Sewer P.		
		Window Glass		
		Wood Turning		
TEXTILE	Textile Bag	Canvas Goods	Batting & Padding	
		Cotton Cloth Glove	Leather Cloth &c.	
		Lace Mfg.		
		Light Sewing Ind.		
		Nottingham, L. Curt.		
DISTRIB. TR.				
CHEMICAL	Salt Prod.	Paper stationery		
FOOD		Import. Date Pack.	Cocoa & Choc.	
		Macaroni	Coffee	
			Refrig. Warehouse	
PUB. UTIL.				
CONSTRUCTION		Cordage & Twine		
		Ready Mixed Conc.		
		Radio Broadcast.		

CLASS G CODES - Under 5,000 EMPLOYEES

MANUFACTURING	Cap & Closure	All Metal Ins.S.	Artificial Limb Arch.	
			Ornam. &c.	
	Marking Devices	Beauty&Barb. Mfg.	Blackboard&c.Metal	Hosp. F.
		Beverage Disp.	Bright Wire Goods	
		Buff&Polish. Wh.	Cap Screw	
		Chain Mfg.	Cut Tack	
		Collaps. Tube	Dental Goods	
		Crown Mfg.	Drapery & C. Hdw.	
		Cutlery	Elect. Plating	
		Fishing Tackle	File Mfg.	
		Forged Tool	Filing Supply	
		Hacksaw Blade	Fire Res. Safe	
		Horseshoe & A.P.	Flex. Metal Hose	
		House.Ice Refrig.	Floor Mach.	
		Lightening Rod	Fly Swatter	
		Mach. Ap. Staple	Galvanized Wire	
		Mach. Knife	Hand Bag Frame	
		Metal Lath	Hog Ring	
		Metal Treating	Job Galvanizing	
		Metal Window	Mach. Screw	
		Metal Wall Struc.	Mach. Screw Nut	
		Porcelain Enam.	Metal Etching	
		Rolling Steel D.	Milk & I. C. Can	
		Saw & Steel Prod.	Open Steel Floor	
		Shoe Shank	Perforating Mfg.	

(CLASS G CODES - UNDER 5,000 EMPLOYEES - Continued)

DIVISION	Over 18 Mo.	12 to 18 Mo.	8 to 12 Mo.	Under 6 Mo.
MANUFACTURING Cont'd.		Slide Fastener Snap Fastener Steel Wool Tool & Implement Umbrella Frame Upholstery Spring Wood Case L. Penc Wrench Mfg.	Public Seating Pipe Tool Pulp & P.M. Wire C Socket Screw Prod Standard Steel Bbl. Steel Package Tubular Split Rivet Upward Act. Door Vise Mfg. Vit. Enamel Ware Wash. Mach. Parts Wire Rope Wood Screw	
EQUIPMENT	Compressed Air	Air Valve Alloy Casting Canning & Pack. Card Clothing Clay Mach. Com. Refrig. Cylinder Mold Elec. Ind. Tr. Fire Ext. App. Foundry Supply Funeral Vehicle Gas Cock Gasoline Pump Hand Chain Hoist Ind. Safety Eq. Mach. Tool Motor Fire App. N-Ferrous H.W.T. N-Ferrous Steel C Pipe Nipple Power & Gang L.M. R.R. Special Track Reduction Mach. Road Mach. Rock Crusher Spray Painting Steel Tubu & F.B. Stone Finishing Tackle Block Unit Heater Wire Rod & T.D.	Air Filter Auto Hot.W. Heat Beater & Jordan Brass Forging Cast.& Floor Tr. Chem. Eng. Eq. Cold Storage D. Concrete Mixer Contractors Pump Conveyor & c. Cutting Die Diamond Core Drill Diesel Engine Electric Hoist Gas P. Ind. Tr. Hoist Builders Hoist Engine Jack Mfg. Kiln Cooler & Dry Laundry & Dry Cl. Leaf Spring Mfg. Lift Truck Marine Equip. Liquefied Fuel Mechan. Lubric. Mechan. Press Multi-v Belt Dr. Oil F. Pump. Eng. Paper Box Machine Port Elect. Lamp R. R. Appliance Refrig. Mach. Refrig. Ind. Refrig. Valves Ring Traveler Rock & Ore Crush. Roller & S. Chain Rolling Mill Mach. Sawmill Mach. Shuttle Mfg. Sprocket Chain.	Auto Shop Equip. Can Labeling Cereal Mach. Gasket Mfg. Power Transmis. Wheel & Rim Wiring Device

(CLASS G CODES - UNDER 5,000 EMPLOYEES - Continued)

DIVISION	Over 18 Mo.	12 to 18 Mo.	6 to 12 Mo.	Under 6 Mo.
EQUIPMENT Continued.			Trailer Mfg. Warm Air Furnace Warm Air Register Water Meter Mfg. Waterpower Eq. Water Softener Woodwork Mach.	
BASIC MAT.	Plumbago Cruc.	Asphalt & Am. Tile Chinaware & Porc. Clay Drain Tile Clay & S.R.Tile Earthenware End Grain Strip Excelsior Feldspar Fibre Wall Bd. Fullers Earth Grinding Wheel Ind.--Brass & Br. Insulation Board Ladder Mfg. Mica Mop Stick Ornament. Mould. Picture Mould. Preformed Plast. Quicksilver Rock & Slag W. Roofing Gran. Sand Lime Brick Sandstone Secondary Alumin. Shoe Last Slate Talc & Soapstone Venitian Blind Whol. Non. Marble Wood Insl. Pin	Abrasive Grain China Clay Prod. Dowel Dowel Pin Flex. Insul. Manganese Marble Quarrying Natural Cleft St. Soft Lime Rock Woven Wood Fabric	Bitum. Road M Wood Plug
TEXTILE		Animal Soft Hair Cotton Converting Covered Button Fiber MWC Button Fur Dealing Tr. Hair Cloth Mfg. Hair & Jute Felt Milk Filtering Ready Made Slip C. Rug Chem Process. Sanitary & W. Spec. Wool Felt	Bias Tape Curled Hair Grass & F. Rug Papermakers Felt Shoe Pattern	Brattice Clot Canvas St.Bel Horse HairDre

(CLASS G CODES - UNDER 5,000 EMPLOYEES - Continued)

DIVISION	Over 18 Mo.	12 to 18 Mo.	6 to 12 Mo.	Under 6 Mo.
DISTRIB. TR		Advert. Display	Ind. Whol. Plumb.	
		Beauty & Barber Eq.	Private H.S. School	
		Commerc. Stationery	Radio Wholesale	
		Liquefied Gas	School Supplies	
		Machine Waste	Sheet Metal Dist.T.	
		Upholstery & D.F.	Whol. Jewelry	
			Whol. Stationery	
CHEMICAL		Amer. Match	Ag.Ins. & Fung.	Carbon Dioxide
		Bleached Shellac	Auto Chem Spec.	
		Bulk Drink. Straw	Ind. Alcohol	
		Candle Mfg.	Pac.C.Soap & Gl.	
		Carbon Black	Stereo.Dry Mat.	
		Cloth Reel	Sulphonated Oil	
		Cyl. LTP. Contain.		
		Fibre Can & Tube		
		Fluted Cup.		
		Food Dish		
		Glazed & F. Paper		
		Gummed Label		
		Gumming		
		Hardwood Distil.		
		Insect. & Disinfec.		
		Lye		
		Oben Paper Disc. L.B.C.		
		Photo. Mount		
		Pyrotechnic		
		Reclaimed Rubber		
		Rubber Tie		
		Sample Card		
		Sanitary Milk B. C.		
		Sanitary Napkin		
		Tag		
		Transparent M. C.		
		Waterproof Paper		
		Waxed Paper		
FOOD		Chewing Gum	Blue Crab	
		Fresh Oyster	Cal. Sardine	N.Eng.Sardine
		Mayonnaise	Dog Food	
		Peanut Butter	Ice Cream Cone	
		Whol. Lobster	Malt Prod.	
			N.Eng. Fish	
			Preserve, Etc.	
			Process.Fish Oil	
			Spice Grinding	
			Trout Farming	
CONSTRUCTION		Cork	Corrug. R.M.C. Pipe	
		Elect. Contract	Steel Joist	
		Reinforcing Mat.		

NOTE; These tables are subject to error, for a number of reasons explained in the text. Until checked and made perfect, they are not to be published.

ANALYSIS OF TRADE PRACTICES

PROVISIONS RELATING TO OPEN PRICE AND BID FILING SYSTEMS

CODES — NAME	NO	Office Memo #228 Incorporated	Establishment of System: Mandatory	Establishment of System: At Discretion of Authority	Establishment of System: By Majority Vote	Amendment of System: At Discretion Code Authority	Amendment of System: By Majority Vote	Degree of Compulsion on Members to File: Obligatory	Optional	Optional: Lowest Filed Price Imputed	Certain Members	Agency with which Information is Filed: National Code Authority	Regional Code Authority	Trade Association	Impartial Agency: Named by Code	Impartial Agency: Named by Code Authority	Impartial Agency: Administrator	Buyers Concerning Whom Members Exempted From Filing Information: By Implication	By Code: Governments	By Code: Certain Large Buyers	By Code: Others
I FOOD DIVISION	37	8	23	3				26				14	2	1		9	9		1		1
II TEXTILE DIVISION	100	5	29	3	2	2		34			1	19		8		5	5				1
III BASIC MATERIALS DIVISION	90	8	61	6	4			66		2	1	45	7	4		10	8	2			
IV CHEMICAL DIVISION	71	5	28	22		7		0		21		40		6		5	3	6	3		2
V EQUIPMENT DIVISION	170	14	75	46	37	11	2	23			1	98		6		22	13	4		2	1
VI MANUFACTURING DIVISION	126	21	68	18	10			87	1			8	1	2	7	34	20	2		1	
VII CONSTRUCTION DIVISION	26			1				1				1									
VIII PUBLIC UTILITIES DIVISION	16	1	6					6				3	2			1	1				
IX FINANCE, GRAPHIC ARTS, AMUSEMENT DIVISION	16	3	3	2	1	2	2	5				2				3	3				
X PROFESSIONS DIVISION	8		5					5				3	2								
XI WHOLESALE & RETAIL DIVISION	83	5	21	7	2	1		28	2	2		14	8	3		5	3	1	1		2
TOTAL	743	70	[illegible]	[illegible]	56	23	4	431	3	25	3	28	22	30	7	94	65	15	5	3	7

CODES — NAME	Products Respecting Which Information Must be Filed: All Products	C.A. Authority to Prescribe	Determined by Majority	Specified Products Only	Standard and Non Standard Products	Certain Products Specified	Certain Products Excluded	No Provision	Information Which Must Be Filed — Prescribed by Code: Prices Only	Items in Addition to Prices: Terms and/or Conditions of Sale	Discounts	Allowances	Rebates and/or Commissions	Other Items	Names of Customers	Past Prices Only	C.A. may alter Data Required	C.A. Prescribes Data Required	C.A. Prescribes Reporting Form
I FOOD DIVISION	12	4			7	1	2	2	3	21	17	7	5	3			1	3	1
II TEXTILE DIVISION	14	1	1	3	5	1	1	7	4	24	21	11	8	5		2			1
III BASIC MATERIALS DIVISION	28			4	9	3	1	22	5	48	42	23	16	12	9		2		1
IV CHEMICAL DIVISION	12	22		5	2	1	2	8	4	5	42	14	6	12					28
V EQUIPMENT DIVISION	27	50	37	19	15	1	3	12	7	97	02	28	25	23	5	1	2		7
VI MANUFACTURING DIVISION	25	11	6	11	22	4	1	19	3	70	76	32	30	21	3				19
VII CONSTRUCTION DIVISION		1									1								
VIII PUBLIC UTILITIES DIVISION	6					1			2	3	2		1						
IX FINANCE, GRAPHIC ARTS, AMUSEMENT DIVISION		2	1		3					5	3	3	3	2					
X PROFESSIONS DIVISION	2	1		1				1	1	4	2	1		1			1		
XI WHOLESALE & RETAIL DIVISION	18	4		2	3	1	2	4	3	25	17	13	5	7					2
TOTAL	44	96	45	45	66	13	12	75	32	[illegible]	[illegible]	132	99	86	17	3	6	3	59

CODES — NAME	Number of Price Lists to be Filed: Enough for All Members	Enough for Members and Customers	One or Several Only	C.A. Prescribes Number	Revisions Require Complete New Price List	Dissemination to Members — Members to Whom Sent: Sent to All Members	Sent Only to Producers of Similar Products	Sent Only to Members of Same Region	Sent Only Upon Request	Sent Only Upon Payment of Cost	Data Sent: Upward Revisions Only	Data Sent: Lowest Filed Price Only	Inspection Only	At Discretion of Code Authority	No Provision
I FOOD DIVISION			22	4	5	7				1			10	4	3
II TEXTILE DIVISION	3		29		7	18	1		3			1	3		7
III BASIC MATERIALS DIVISION	9		57		15	32	3	5	2	3			16	1	9
IV CHEMICAL DIVISION	3		46	1	6	10	27		4			1	3	1	5
V EQUIPMENT DIVISION	15	2	81	25	12	41	54		4	2			12	2	9
VI MANUFACTURING DIVISION	14		57	18	25	46	23	1	2				7		16
VII CONSTRUCTION DIVISION			1				1								
VIII PUBLIC UTILITIES DIVISION			6			1							3		2
IX FINANCE, GRAPHIC ARTS, AMUSEMENT DIVISION			3	2									5		
X PROFESSIONS DIVISION			5										3		2
XI WHOLESALE & RETAIL DIVISION			30		8	9	1	4	3	4			6		7
TOTAL	44	2	337	50	78	164	110	10	18	10	—	2	68	8	60

CODES — NAME	Dissemination to Customers — To Whom Sent: Sent to All Customers	Sent Only Upon Request	Sent Only Upon Payment of Cost	Time: At Same Time as to Members	Time: At Later Date Than to Members	Inspection: Available to All Customers	Inspection: Available Only to Certain Classes	At Discretion of Code Authority	No Provision	Dissemination by Members Themselves in Addition to Filing — Must Send Price Lists: To Members Only	To Members & Customers	Must "Publish" Prices	Must Post Prices
I FOOD DIVISION		9	9	8		14	5	4	3			5	
II TEXTILE DIVISION	1	7	6	5		10	1		18	1		5	
III BASIC MATERIALS DIVISION	1	10	9	8	2	37	1	3	24		4	23	
IV CHEMICAL DIVISION		29	29	28		8		1	13	1		6	
V EQUIPMENT DIVISION		18	18	16		56	10	1	53	1	7	17	1
VI MANUFACTURING DIVISION		17	18	15		59	4		24			26	1
VII CONSTRUCTION DIVISION						1							
VIII PUBLIC UTILITIES DIVISION		1	1	1		2			4			2	2
IX FINANCE, GRAPHIC ARTS, AMUSEMENT DIVISION						3		2					
X PROFESSIONS DIVISION						2			3				
XI WHOLESALE & RETAIL DIVISION		13	13	7		19	2		6			4	4
TOTAL	2	104	103	88	2	211	23	11	148	3	11	88	8

TOTAL

OPEN PRICE SYSTEMS 444

BID FILING SYSTEMS 31

ANALYSIS OF TRADE PRACTICES

PROVISIONS RELATING TO OPEN PRICE AND BID FILING SYSTEMS

CODES: NAME	NO.	Speed of Dissemination Required of Agency: By Maj.	Immediately or "Promptly"	No Provision	Notification or Release to All one Member Before All	Identification by Central Agency of Seller: Mandatory	Seller: Optional	Seller: Prohibited	Seller: No Provision	Buyer: Prohibited (Post Transactions)	Waiting Period Requirements, None: Effective upon Receipt by Agency	None: Effective upon Administrative Approval	None: Effective Even Before Filing	Code Authority May Establish	Before Any Revisions	Before Decreases only	Before Increases only	Alteration of Waiting Period, Shortening to meet competitor's reduction effective upon same date: Whether or not below	If not below	If filed price	Code Authority May Shorten	No Provision	Code Authority May Lengthen	Minimum Period Between Revisions: Before Any Changes	Before Increases only	Before Decreases only	Limitation on Number of Changes
I FOOD DIVISION			9	16	7	9	4		12		9		1	3	13 (13-5)			1	2			9			5		
II TEXTILE DIVISION			16	9	5	5		1	19	2	9		8		3 (1-5)	11 (6-5)		8	3		1	3			5		
III BASIC MATERIALS DIVISION		2	38	19	9	9	1		47		16	2	5	9	13 (7-5)	22 (9-5)		5	20	4	5	10	1		8		
IV CHEMICAL DIVISION		1	36		5	4	1		40		8		2	1	3 (1-5)	36		9	23	2	2	5	1		5		1
V EQUIPMENT DIVISION		2	89	24	16	16	1		97		21		3	6	61 (55)	31 (11-5)		44	34	5	16	13	2		16		
VI MANUFACTURING DIVISION		2	73	6	25	21			7	1	25	3		4 (1-5)	32	24 (13-5)		8	36	2	4	13		1	22		
VII CONSTRUCTION DIVISION			1						1				1														
VIII PUBLIC UTILITIES DIVISION			1	3	1	1			3		2		1		3 (1-5)							3			1		
IX FINANCE GRAPHIC ARTS AMUSEMENT DIVISION			2	3	3	3			2		3					2						2			3		
X PROFESSIONS DIVISION				3		1			2				1		3 (2-5)	1 (1-5)					1	3					
XI WHOLESALE & RETAIL DIVISION		1	12	10	5	6			17		10	1	5		9 (7-5)	5 (2-5)		2	4		1	9		1	5		
TOTAL		8	277	93	76	75	8	1	297	3	103	6	27	23 (1-5)	40 (13-5)	32 (70-)		77	22	13	30	70	4	2	70		1

CODES: NAME	Filed Price & Effective Price: Must Sell at Filed Price	May Sell above Filed Price	May Meet Lowest Filed Price	May Sell Special Goods Below	Area of Price Uniformity: Regional Variations Permitted	Code Sets up Regions for Price Reporting	C.A. May Set up Regions for Price Reporting	Code Requires Uniformity in All Regions	Prohibition of Comments by Agency in Dissemination	Destruction of Agency's Price Records Prohibited	Adjustment of Bids when Prices Increased: Bids Must be Increased	Must be Reopened but Not Increased	Substitutes for Central Filing: Members Must Post Prices	Members Must Exchange Prices Directly	Prices Must be Sent to Customers	Must Publish Prices in Trade Periodicals	May Not Sell Below Reported Prices
I FOOD DIVISION	20	1	5	2	3		3		8	5			1	1		1	2
II TEXTILE DIVISION	12	17	2	5						5			1				1
III BASIC MATERIALS DIVISION	39	27	1	1	6	7		3		9		4	1				1
IV CHEMICAL DIVISION	10	38			6	1	4			5							
V EQUIPMENT DIVISION	82	38	1	3	2					16	1	4					
VI MANUFACTURING DIVISION	55	32	8	1	4	1		1		23		3					
VII CONSTRUCTION DIVISION		1															
VIII PUBLIC UTILITIES DIVISION	5		1	1						1							
IX FINANCE GRAPHIC ARTS AMUSEMENT DIVISION	3	2								3							
X PROFESSIONS DIVISION	4	1	1			1						1	1				
XI WHOLESALE & RETAIL DIVISION	21	9	2	2	4	4	5		1	5							
TOTAL	251	166	21	15	25	14	12	4	9	72	1	12	4	1		1	4

CODES: NAME	Filing of Sealed Bids — Establishment of System: Code Provides Details	Code Authority to Set up Rules	Depository with which Filed: Code Authority	Impartial Agent Named by C.A.	Estimating Bureau	Some Other Agency	Time of Filing: Before Closing Date	After Closing Date	No Provision	Information to be Filed: Notification of Intent to Bid	Exact Duplicate Bid	Lump Sum Bid Only	Itemized Quantities	Other Data	Time of Opening by Depository: Upon Receipt	After Closing Date	No Provision	Time & Extent of Dissemination, When Opened Before Closing Date: Released Before Closing Date	Released After Closing Date	When Opened After Closing Date: Available for Inspection	Sent to All Bidders	No Provision	C.A. to Investigate Bid upon Complaint of Member
I FOOD DIVISION																							
II TEXTILE DIVISION																							
III BASIC MATERIALS DIVISION	2	2	2				1		1	1	2					1	1				1	1	
IV CHEMICAL DIVISION																							
V EQUIPMENT DIVISION	2		2				1		1	2	2				1	1	1	1				1	
VI MANUFACTURING DIVISION	4		1	1	2		3	1			3	1	1		2	1	1		2		1	1	1
VII CONSTRUCTION DIVISION	3	8	1	10		2	6		7	1	13		1			13				2	11		9
VIII PUBLIC UTILITIES DIVISION																							
IX FINANCE GRAPHIC ARTS AMUSEMENT DIVISION																							
X PROFESSIONS DIVISION																							
XI WHOLESALE & RETAIL DIVISION																							
TOTAL	21	10	6	11	2	2	11	1	9	4	20	1	2		3	16	3	1	2	2	14	3	10

EXHIBIT III

Alphabetical List of 191 Codes in

Over-All Sample for Price

Filing Study

E X H I B I T III

ALPHABETICAL LIST OF 191 CODES IN OVER-ALL SAMPLE FOR PRICE FILING STUDY

No.	Code	Division
275A	AGRICULTURAL INSECTICIDE & FUNGICIDE - div. of Chemical Mfg. Ind.	Chemical
112	ALL METAL INSECT SCREEN INDUSTRY	Manufacturing
85	AMERICAN PETROLEUM EQUIPMENT IND. & TRADE	Equipment
80	ASBESTOS INDUSTRY	Basic Material
150	ASPHALT AND MASTIC TILE INDUSTRY	Basic Material
99	ASPHALT SHINGLE AND ROOFING INDUSTRY	Basic Material
105A	AUTOMOBILE HOT WATER HEATER MFG.- Sup. Automotive Parts & Equipment Ind.	Equipment
445	BAKING INDUSTRY	Food
201D	BEAUTY & BARBER EQUIPMENT MFG. - Div. Wholesale or Distributing Trade	Manufacturing
530	BITUMINOUS ROAD MATERIAL DISTRIBUTING TRADE	Basic Material
403	BLEACHED SHELLAC MANUFACTURING INDUSTRY	Chemical
38	BOILER MFG. INDUSTRY	Equipment
459	BOTTLED SOFT DRINK INDUSTRY	Food
37	BUILDERS' SUPPLY TRADE	Distributing
96	BUFF & POLISHING WHEEL INDUSTRY	Manufacturing
88	BUSINESS FURNITURE STORAGE EQUIPMENT & FILING SUPPLY INDUSTRY	Manufacturing
302	CANDLE MFG.IND. & BEESWAX BLEACHERS & REFINERS	Chemical
463	CANDY MANUFACTURING INDUSTRY	Food
429	CANNED SALMON INDUSTRY	Food
446	CANNING INDUSTRY	Food
333	CANVAS GOODS INDUSTRY	Textile
58	CAP AND CLOSURE INDUSTRY	Manufacturing

No.	Code	Division
269	CARBON BLACK INDUSTRY	Chemical
275B	CARBON DIOXIDE IND. - Div. of Chemical Mfg.Ind.	Chemical
222	CARD CLOTHING INDUSTRY	Equipment
202	CARPET AND RUG MFG. INDUSTRY	Textile
258	CAST IRON BOILER & CAST IRON RADIATOR INDUSTRY	Equipment
18	CAST IRON SOIL PIPE INDUSTRY	Equipment
128	CEMENT IND. (See Portland Cement Ind.)	Basic Material
84C	CHAIN MFG. IND. - Div. Fabricated Metals	Manufacturing
275	CHEMICAL MANUFACTURING INDUSTRY	Chemical
520	CHINA CLAY PRODUCING INDUSTRY	Basic Material
467	CIGAR MANUFACTURING INDUSTRY	Food
389	CLAY & SHALE ROOFING AND TILE INDUSTRY	Basic Material
364	CLAY DRAIN TILE MFG. INDUSTRY	Basic Material
265	Coffee Industry	Food
201C	COMMERCIAL STATIONERY & OFFICE OUTFITTING TRADE - Div. Whole. or Dist. Trade	Distributing
84L1	COMPLETE WIRE & IRON FENCE IND. - Div. Fabricated Metals	Manufacturing
55	COMPRESSED AIR INDUSTRY	Equipment
133	CONCRETE MASONRY INDUSTRY	Basic Material
81	COPPER & BRASS MILL PRODUCTS IND.	Basic Material
401	COPPER INDUSTRY	Basic Material
303	CORDAGE AND TWINE INDUSTRY	Construction
199	CORK INDUSTRY	Construction
245	CORRUGATED & SOLID FIBRE SHIPPING CONTAINER	Chemical
511	CORRUGATED ROLLED METAL CULVERT PIPE IND.	Construction
187	COTTON CLOTH MFG. IND.	Textile
1	COTTON TEXTILE INDUSTRY	Textile

No.	Code	Division
77	CROWN MFG. INDUSTRY	Manufacturing
109	CRUSHED STONE, SAND & GRAVEL & SLAG INDUSTRIES	Basic Materials
423	DROP FORGING INDUSTRY	Equipment
322	EARTHENWARE MFG. INDUSTRY	Basic Materials
4	ELECTRICAL MANUFACTURING INDUSTRY	Equipment
186	END GRAIN STRIP WOOD BLOCK INDUSTRY	Basic Materials
220	ENVELOPE MFG. INDUSTRY	Chemical
146	EXCELSIOR AND EXCELSIOR PRODUCTS INDUSTRY	Basic Materials
39	FARM EQUIPMENT INDUSTRY	Equipment
67	FERTILIZER INDUSTRY	Chemical
326	FIBRE WALLBOARD INDUSTRY	Basic Materials
88B	FILING SUPPLY IND. Sup. Business Furniture, etc.	Manufacturing
98	FIRE EXTINGUISHING APPLIANCE MFG. IND.	Equipment
88A	FIRE RESISTIVE SAFE IND. Sup. Bus. Furniture	Manufacturing
92	FLOOR & WALL CLAY TILE MFG. IND.	Basic Materials
193	FOLDING PAPER BOX INDUSTRY	Chemical
90	FUNERAL SUPPLY INDUSTRY	Manufacturing
224	FURNITURE & FLOOR WAX & POLISH	Chemical
S4A1	GALVANIZED WARE MFG. IND. Div. Fabricated Metals	Manufacturing
134	GAS APPLIANCES & APPARATUS IND.	Equipment
70	GAS COCK INDUSTRY	Equipment
105I	GASKET MFG. IND. Sup. Auto. Parts & Equip.	Equipment
26	GASOLINE PUMP MFG. IND.	Equipment
117	GEAR MFG. IND.	Equipment
248	GLAZED AND FANCY PAPER INDUSTRY	Chemical
287	GRAPHIC ARTS INDUSTRIES COMMERCIAL RELIEF PRINTING NON-METROPOLITAN NEWSPAPER PERIODICAL PUBLISHING	Gra.Arts.Div.

No.	Code	Division
512	GRASS & FIBRE RUG INDUSTRY	Textile
277	GRAY IRON FOUNDRY INDUSTRY	Equipment
17	GRINDING WHEEL MFG. IND.	Basic Materials
293	GUMMING INDUSTRY	Chemical
420	GYPSUM INDUSTRY	Basic Materials
73	HAIR & JUTE FELT INDUSTRY	Textile
110	HARDWOOD DISTILLATION IND	Chemical
56	HEAT EXCHANGE INDUSTRY	Equipment
183	HOUSEHOLD ICE REFRIGERATOR INDUSTRY	Manufacturing
43	ICE INDUSTRY	Food
2750	INDUSTRIAL ALCOHOL -Div.Chemical Mfg. Ind.	Chemical
315	IND.SAFETY EQUIP.IND.& IND.SAFETY EQUIP.TRADE	Equipment
391	INSECTICIDE & DISINFECTANT MFG.IND.	Chemical
11	IRON & STEEL IND.	Basic Materials
6	LACE MFG. INDUSTRY	Textile
107	LADDER MFG. IND.	Basic Materials
34	LAUNDRY & DRY CLEANING MACHINERY MFG. IND.	Equipment
1050	LEAF SPRING MFG.-Sub.Automotive Parts & Equip.	Equipment
51	LIME INDUSTRY	Basic Materials
113	LIMESTONE INDUSTRY	Basic Materials
104	LIQUEFIED GAS INDUSTRY	Distributing
412	LOOSE LEAF & BLANK BOOK INDUSTRY	Chemical
300	LYE INDUSTRY	Chemical
234	MACARONI INDUSTRY	Food
103	MACHINE TOOL & FORGING MACHINERY INDUSTRY	Equipment
149	MACHINED WASTE MFG. IND.	Distributing
421	MARBLE QUARRYING & FINISHING INDUSTRY	Basic Materials

No.	Code	Division
59	MARKING DEVICES INDUSTRY	Manufacturing
349	MAYONNAISE INDUSTRY	Food
175	MEDIUM & LOW PRICED JEWELRY MFG. IND.	Manufacturing
232	MERCHANDISE WAREHOUSING TRADE	Public Utilities
344	METAL LATH MFG. IND.	Manufacturing
84A	METALLIC WALL STRUCTURE IND.-Div.Fab.Metals	Manufacturing
205	METAL WINDOW INDUSTRY	Manufacturing
108	MOTOR FIRE APPARATUS MFG. IND.	Equipment
519	NATURAL CLEFT STONE INDUSTRY	Basic Material
271	NONFERROUS AND STEEL CONVECTOR MFG. IND.	Equipment
84N	NONFERROUS HOT WATER TANK MFG.IND.-Div.Fab.Met.	Equipment
78	NOTTINGHAM LACE CURTAIN INDUSTRY	Textile
25	OIL BURNER INDUSTRY	Equipment
448	OPTICAL WHOLESALE IND. AND TRADE	Manufacturing
430	PACKAGE MEDICINE INDUSTRY	Chemical
120	PAPER AND PULP INDUSTRY	Chemical
230	PAPER BAG MFG. IND.	Chemical
176	PAPER DISTRIBUTING TRADE	Distributing
361	PERFUMES,COSMETICS & OTHER TOILET PRPS.IND.	Chemical
290	PHOTOGRAPHIC MOUNT INDUSTRY	Chemical
524	PICKLE PACKING INDUSTRY	Food
131	PIPE NIPPLE MFG. IND.	Equipment
63	PLUMBAGO CRUCIBLE INDUSTRY	Basic Materials
204	PLUMBING FIXTURES INDUSTRY	Equipment
239	PORCELAIN BREAKFAST FURNITURE ASSEMBLING IND.	Manufacturing
4B	PORTABLE ELECTRIC LAMP & SHADE- Subdiv.Elec.	Equipment
359	PREFORMED PLASTIC PRODUCTS INDUSTRY	Basic Materials

No.	Code	Division
257	PRINTING EQUIPMENT INDUSTRY & TRADE	EQUIPMENT
50J	PROCESSED OR REFINED FISH OIL INDUSTRY	Food
57	PULP MANUFACTURING INDUSTRY	Equipment
148	PYROTECHNIC MANUFACTURING INDUSTRY	Chemical
105J	RADIATOR MFG. -Div.Auto.Parts and Equipment	Equipment
201G	RADIO WHOLESALING TRADE -Div.Whole. or Dist.	Distributing
172	RAYON & SILK DYEING & PRINTING INDUSTRY	Textile
311	READY MIXED CONCRETE INDUSTRY	Construction
168	REFRACTORIES INDUSTRY	Basic Materials
4A	REFRIGERATION -Subdiv.Electrical Mfg.Ind.	Equipment
127	REINFORCING MATERIALS FABRICATING IND.	Construction
105B	REPLACEMENT AXEL SHAFT -Supp. Automotive parts	EQUIPMENT
33	RETAIL LUMBER, LUMBER PRODUCTS, BUILDING MATERIALS AND BUILDING SPECIALTIES TRADE	Distributing
366	RETAIL MONUMENT INDUSTRY	Distributing
410	RETAIL RUBBER TIRE & BATTERY TRADE	Distributing
280	RETAIL SOLID FUEL INDUSTRY	Distributing
68	ROAD MACHINERY MANUFACTURING INDUSTRY	Equipment
171	ROLLING STEEL DOOR INDUSTRY	Manufacturing
156	RUBBER MANUFACTURING INDUSTRY	Chemicals
174	RUBBER TIRE MFG. IND.	Chemical
20	SALT PRODUCING INDUSTRY	Chemical
200	SANITARY NAPKIN & CLEANING TISSUE IND.	Chemical
274	SAW & STEEL PRODUCTS MFG. IND.	Manufacturing
114	SCIENTIFIC APPARATUS INDUSTRY	Equipment
167	SET UP PAPER BOX MFG. IND.	Chemical
201P	SHEET METAL DISTRIBUTING TRADE -Div. Whole.	Distributing

No.	Code	Division
102	SHOVEL, DRAGLINE & CRANE IND.	Equipment
48	SILK TEXTILE INDUSTRY	Textile
84Z	STANDARD STEEL BARREL & DRUM MFG.-Div.Fab.Met.	Manufacturing
279	STEAM HEATING EQUIPMENT INDUSTRY	Equipment
82	STEEL CASTING INDUSTRY	Equipment
62	STEEL TUBULAR & FIRE BOX BOILER IND.	Equipment
313	STEEL WOOL INDUSTRY	Manufacturing
158	STONE FINISHING MACHINERY & EQUIPMENT IND.	Equipment
123	STRUCTURAL CLAY PRODUCTS INDUSTRY	Basic Materials
469	SULPHONATED OIL MANUFACTURING INDUSTRY	Chemical
249	TAG INDUSTRY	Chemical
54	THROWING INDUSTRY	Textile
86	TOYS AND PLAYTHINGS INDUSTRY	Manufacturing
382	TRANSPARENT MATERIALS CONVERTERS IND.	Chemical
23	UNDERWEAR AND ALLIED PRODUCTS MFG. IND.	Textile
272	UNIT HEATER AND/OR UNIT VENTILATOR MFG.IND.	Equipment
502	UPWARD-ACTING DOOR INDUSTRY	Manufacturing
153	VALVE & FITTINGS MANUFACTURING INDUSTRY	Equipment
136	VITRIFIED CLAY SEWER PIPE MFG. IND.	Basic Materials
137	WARM AIR FURNACE MANUFACTURING INDUSTRY	Equipment
472	WARM AIR REGISTER INDUSTRY	Equipment
295	WATERPROOF PAPER INDUSTRY	Chemical
166	WAX PAPER INDUSTRY	Chemical
105D	WHEEL & RIM MFG.-Sup.Auto.Parts & Equip.	Equipment
458	WHOLESALE CONFECTIONERS INDUSTRY	Food
201U	WHOLESALE COPPER, BRASS, BRONZE & RELATED ALLOYS Div.Wholesale or Distributing Trade	Distributing

No.	Code	Division
449	WHOLESALE MONUMENTAL GRANITE INDUSTRY	Basic Materials
484	WHOLESALE MONUMENTAL MARBLE INDUSTRY	Basic Materials
508	WHOLESALE PLUMBING PRODUCTS, HEATING PRODUCTS AND/OR DISTRIBUTING PIPE, FITTINGS & VALVES	Distributing
462	WHOLESALE TOBACCO TRADE	Food
8481	WIRE ROPE & STRAND MFG. IND.-Div.Fab.Metals	Manufacturing
4C	WIRING DEVICES- Subdiv.electrical mfg.ind.	Equipment
291	WOOD CASED LEAD PENCIL INDUSTRY	Manufacturing
3	WOOL TEXTILE INDUSTRY	Textile
383	WOOD TURNING & SHAPING INDUSTRY	Basic Materials

EXHIBIT IV

OPEN PRICE PLAN FOR THE FOLDING PAPER BOX INDUSTRY

FOLDING BOX AUTHORITY
19 West Forty-Fourth Street,
New York, N. Y.

October 22, 1934
Bulletin No. 29-H
Open Price Plan

TO ALL MEMBERS OF THE FOLDING PAPER BOX INDUSTRY:

The Code Authority has declared all products of the Industry subject to the Open Price Plan of Selling with the exception of those products exempted in Order No. 12-B. Order No. 12-F was issued under and pursuant to the provisions of Article VI, Accounting-Selling, of the Code of Fair Competition for the Folding Paper Box Industry, approved by the President on December 30, 1933, and sets forth the method of operation. The purpose of this Bulletin is to explain in detail the optional courses of procedure provided in the Open Price Plan, any one of which the members of the Industry may choose, and to show what information the members will receive from the Code Authority in connection with the plan. The information in this Bulletin supersedes that given in Bulletins 29-A and 29-B.

OPEN PRICE PLAN

In order to sell a particular product to a particular customer in full accordance with the provisions of the open price plan, each member shall sell or offer for sale any particular product to a particular customer by making use of any of the following methods prescribed in the plan:

1. Register Customer and Product
2. Register Inquiry.
3. Quote Price in accordance with Estimating Manual.

1. Register Customer and Product

A member becomes a Registered Member on any product when he files Customer Registration and Product Registration. All Registered Members will receive notification of all Registered Members, inquiries and declarations of price concerning the product on form listed on page 4.

A member registered on a particular product proceeds as follows:

1. When no price has been declared,
   a. Sells or offers product for sale immediately, at any price he chooses which is not below his own cost and without notification to Code authority; or

b. Declares a price, not below his own cost, and sells or offers product for sale immediately at price declared.

2. When Price has been declared,
   a. Sells or offers product for sale immediately, and without notification to Code Authority, at lowest declared price on or after its effective date providing he has no higher price on file himself. In the latter case he must use his own price until such time as he withdrawn his price or files a different price; or

   b. Declares a price, not below his own cost. If this price is higher than the lowest declared price, it becomes effective immediately. If this price is lower than the lowest declared price, it becomes effective five days from receipt in Zone Office in which customer is located. If this price is lower than the lowest declared price but higher than one declared which is awaiting its effective date, the new price becomes effective on the same date as the one awaiting its effective date.

Prices once declared remain effective until withdrawn or superseded. To place any product on a closed price basis, all declared prices must be withdrawn.

2. Register an Inquiry

When a member, not registered on a product, receives a bona fide inquiry from a customer, he shall file a Registration of Inquiry. The Zone Agent will immediately notify the inquirer regarding the complete status of the account including the members who are registered or have made inquiries on the product and any prices which have been declared.

A member who has registered an inquiry on a particular product proceeds as follows:

1. When product has not been registered by any other member.
   a. Sells or offers product for sale immediately, at any price he chooses which is not below his own cost and without notification to Code Authority; or

   b. Declares a price, not below his own cost, and sells or offers product for sale immediately.

2. When product is registered and a price declared,
   a. Sells or offers product for sale immediately, and without notification to Code Authority, at lowest declared price on or after its effective date; or

b. Declares a price, not below his own cost. If this price is higher than the lowest declared price, it becomes effective immediately. If this price is lower than the lowest declared price, it becomes effective five days from receipt in Zone Office in which customer is located. If this price is lower than the lowest declared price but higher than one declared which is awaiting its effective date, the new price becomes effective on the same date as the one awaiting its effective date.

3. When product is registered but no price declared.
At end of three days from receipt of first Inquiry on this product still effective in Zone Office of zone in which customer is located, inquirer

a. Sells or offers product for sale, at any price he chooses which is not below his own cost and without notification to Code Authority; or

b. Declares a price, not below his own cost and sells or offers product for sale at this price.

An inquiry member, except for the three day period outlined in "3" above, has the same status as a Registered Member for a period of thirty days from receipt of inquiry in Zone Office of zone in which customer is located and will receive same information as a Registered Member. If inquiring member makes the sale, he should register the customer and product and become a permanently Registered Member.

When N forms are sent to members, the forms will show the complete and up-to-date status of the account and will supersede any previous notification concerning the same customer and product. When a member is only registrant or inquirer on a particular product the acknowledgment copy of the Registration of Product or Registration of Inquiry will be returned stamped "Product not Registered - May Quote at Once" and no N sheet will be sent.

3. Use Manual

It is advisable for a member to register all his customers and products so that he may receive prompt information concerning any activity on all his accounts.

However, in lieu of such registering, any member shall sell or offer for sale any product to any customer at any time and without any notification to the Code Authority providing the price is at least equal to the cost computed on the basis of the rates included in the Basic Estimating Manual plus the material cost as issued by the Code Authority and plus the lowest filed percentage for the zone in which purchase is made.

FORMS USED IN OPEN PRICE PLAN

Forms Sent by Members to C.A.	Forms Sent to Members by C.A.
1. When Customer is being Registered	
Registration of Customer RC-1 and RC-2	Acknowledgment Copy RC-2
2. When Product is being Registered	
Registration of Product RP-1 and RP-2	a. Acknowledgment Copy, RP-2 b. Notification of, N-1 1. Other Registrants 2. Inquiries 3. Price Declarations 4. Price Withdrawals
3. When Inquiry is being Registered	
Registration of Inquiry, RI-1 and RI-2	a. Acknowledgment Copy, RI-2 b. For a 30 day period, same notifications as sent Registered Members, N-1
4. When Price is being Declared	
Declaration of Price, D-1 and D-2	a. Acknowledgment Copy, D-2 b. Same notifications as sent Registered Members, N-1
5. When Declaration of Price is being Withdrawn	
Withdrawal of Price, W-1 and W-2	a. Acknowledgment Copy, W-2 b. Same notifications as sent Registered Members, N-1
6. When Percentage is being Declared	
Declaration of Percentage DPC-1 and DPC-2	Acknowledgment Copy, DPC-2 Notice of Lowest Filed Percentages

SUMMARY OF ESSENTIAL REQUIREMENTS FOR EFFECTIVE OPERATION OF OPEN PRICE PLAN

A. Register your products and customers on the forms provided by the Code Authority:

1. Furnish all the information called for on these forms. This is absolutely essential in order that members may be advised of other product registrants and of other activity on the particular product.

   IMPORTANT - Dimensions of boxes should be given as follows:
   1. Length- Larger dimensions at opening
   2. Width - Smaller dimension at opening
   3. Depth - Remaining dimension

   In the absence of compete information on the forms prescribed, it becomes practically impossible for Zone Agent to determine the similarity of products manufactured by more than one member.

2. It is important that the customer's name on both the customer and product registration should be correctly spelled, inasmuch as all records in Zone Agent's files are filed alphabetically, and errors will result in misfiling and confusion of records. If customer is known by more than one name, all names should be shown on forms.

3. It is important that you furnish the name and style of carton as designated in Section 2 of the Basic Estimating Manual.

4. In registering customers and products, the address given for the customer should be that where the purchasing agent of the customer is located so that your registration may be filed in the proper zone. On product registrations, furnish address of customer where purchasing agent is located and also point of delivery, whenever known.

5. Registrations for affiliated or subsidiary products are cross-indexed to parent company.

6. Registration of products sold through jobbers shall be registered and/or declared with cross reference, in the name of both the jobber and the jobber's customer.

7. A member who has registered his specific products and customers in accordance with the Open Price Plan need not declare an open price for any specific product where no competitive situation exists.

8. A Registered Member should file his declaration of price only when he fells that the nature of the specific product for the particular customer requires open price dealing.

9. A member who has declared an open price may not quote a lower price to meet an open price on file, unless he withdraws or supersedes his previously declared open price.

10. No member shall file a declaration of price unless one of the following requirements have been met:

    1) Bona fide registration of product and customer has been filed; or

    2) Bona fide registration of inquiry has been filed.

Very truly yours,

FOLDING BOX AUTHORITY

(signed) A. E. Murphy

Agent Representative

PROBLEMS AND PROCEDURE ARISING UNDER THE OPEN PRICE PLAN

There are many questions and problems that arise from the operation of the Open Price Plan. We have listed several of the most recurring situations, so that the practical operation of the Open Price Plan can be seen.

CASE NO. 1

1. FACTS	PROCEDURE
1. Member A registered on Product X for Customer Y.	1. Member A may immediately quote a price on Product X for Customer Y without declaring such price with the Zone Agent.
2. No other registrants	a) Such price must not be below member A's cost.
3. No inquirers	
4. No price declarations	2. Member A may declare with the Zone Agent a price below which he will not quote to Customer Y on Product X.
	a) Member A may quote declared price immediately.
	b) Such price must not be below member A's cost.

****

CASE NO. 2

1. Members A & B registered on Product X for Customer Y.	1. Members A & B may immediately quote a price to Customer Y without declaration to Zone Agent.
2. No price declaration	a) No price may be below the quoting Member's cost.

CASE NO. 3

FACTS	PROCEDURE
1. Members A & B registered on Product X for Customer Y.	1. Declaration of price by Member A immediately becomes open price for Product X for Customer Y for all registrants.
	a) Such price must not be below own cost of Member A.
2. Member A declares price on Product X for Customer Y which is only price declaration on file	2. Zone Agent, upon receipt of such declaration, will immediately so notify members A & B
	3. Member B may immediately quote the same price as declared by Member A.
	4. If Member B desires to quote a price lower than the declared price of Member A, he must file such price with the Zone Agent
	a) Such price must not be below his own cost.
	b) Member B must wait five days after receipt by Agent before quoting such lower price to Customer Y

* * * * *

CASE NO. 4

1. Member A registers inquiry on Product X for Customer Y.	1. Member A will be informed by the Zone agent that there are no registrants or inquirers on Product X for Customer Y
2. No other Inquirers	2. Member A may immediately quote a price to Customer Y on Product X without declaring such price to the Zone Agent
3. No registrants	a) Price must not be below Member A's own cost

CASE NO. 5

FACTS	PROCEDURE
1. Member A registers inquiry on Product X for Customer Y	1. Member B will be notified immediately by Zone Agent that Member A has registered an inquiry on Product X for Customer Y.
2. Member B is registered on Product X for Customer Y	2. The Zone Agent will immediately notify Member A that Member B is registered on Product X for Customer Y.
3. No declaration of price by Member B on file	3. If there is no declaration by Member B on file, Member A may not quote any price except Manual until 3 days after receipt of inquiry in Zone Office, Saturday and Sunday excluded.
4. Declaration of price by Member B on file	4. If Member B has declared a price on Product X for Customer Y, Member A is notified by the Zone Agent of such price and effective date and Member A may quote such price without declaration on such effective date
	5. Member A may file a lower price than the one declared by Member B a) Such price shall not be below his own cost b) Member A must wait five days after receipt by Zone Agent before quoting such price

****

CASE NO. 6

1. Member A registers inquiry on Product X for Customer Y	1. Member A will be informed by the Zone Agent that there are no registrants or inquirers on Product X for Customer Y
2. Member A declares price on Product X for Customer Y	

	2. Member A may immediately quote his declared price to Customer Y on Product X
3. No other registrants	
4. No other inquirers	a) Such price shall not be below his own cost

CASE NO. 7

FACTS	PROCEDURE
1. Members A & B registered on Product X for Customer Y	
2. Member A declares first price ($10.00) effective November 5th.	1. Member B is notified of declaration of Member A ($10.00)
3. Member B declares price ($8.00)- Declaration received in Zone Office November 10th Declaration effective November 15th	2. Member A is notified of declaration of Member B ($8.00)
4. Member A withdraws his price - Withdrawal received in Zone Office November 12th	3. Member B is notified of withdrawal of declaration of Member A ($10.00) and notification will show effective date of declaration of Member B ($8.00) moved up to effective date of withdrawal of declaration of Member A.

EXHIBIT V

NRA POLICY STATEMENT

EXHIBIT "A"

OPEN PRICE FILING

1. NRA policy favors properly drawn open price provisions in codes where desired by the industry. The attached draft Article reflects approved policy and should be susbtantially followed:

2. The objective is to achieve fair competition, based on knowledge of competitive factors to the fullest extent possible without unduly curtailing private initiative or destroying incentives to any individual legitimately to extend his business.

3. Where industries believe that some waiting period is essential in order to accomplish the objectives outlined, the matter will be treated on its merits as in the case of any proposed departure from announced policy..

"ARTICLE_____; OPEN PRICE

"Section 1. Each member of the trade/industry shall file with a confidential and disinterested agent of the code authority or, if none, then with such an agent designated by the Administrator, identified lists of all of his prices, discounts, rebates, allowances, and all other terms or conditions of sale, hereinafter in this article referred to as 'price terms', which lists shall completely and accurately conform to and represent the individual pricing practices of said member. Such lists shall contain the price terms for all such standard products of the industry as are sold or offered for sale by said member and for such non-standard products of said member as shall be designated by the code authority. Said price terms shall in the first instance be filed within_____days after the date of approval of this provision. Price terms and revised price terms shall become effective immediately upon receipt thereof by said agent. Immediately upon receipt thereof, said agent shall by telegraph or other equally prompt means notify said member of the time of such receipt. Such lists and revisions, together with the effective time thereof, shall upon receipt be immediately and simultaneously distributed to all members of the industry and to all of their customers who have applied therefor and have offered to defray the cost actually incurred by the code authority in the preparation and distribution thereof and be available for inspection by any of their customers at the office of such agent. Said lists or revisions or any part thereof shall not be made available to any person until released to all members of the industry and their customers, as aforesaid; provided, that prices filed in the first instance shall not be released until the expiration of the aforesaid_____day period after the approval of this code. The code authority shall maintain a permanent file of all price terms filed as herein provided, and shall not destroy any part of such records except upon written consent of the Administrator. Upon request the code authority shall furnish to the Administrator or any duly designated agent of the Administrator copies of any such lists or revisions of price terms.

"Section 2. When any member of the trade/industry has filed any revision, such member shall not file a higher price within forty-eight (48) hours.

"Section 3. No member of the trade/industry shall sell or offer to sell any products/services to the trade/industry, for which price terms have been filed pursuant to the provisions of this article, except in accordance with such price terms.

"Section 4. No member of the industry shall enter into any agreement, understanding, combination or conspiracy to fix or maintain price terms, nor cause or attempt to cause any member of the industry to change his price terms by the use of intimidation, coercion, or any other influence inconsistent with the maintenance of the free and open market which it is the purpose of this Article to create."

OFFICE MEMORANDUM NO. 260
July 16, 1934

APPLICATION OF GENERAL POLICY

NRA is endeavoring in the light of its experience to formulate general policies so that interested parties and the organization itself may know and work toward definite NRA aims.

This does not mean that every code in process and not approved at the time of announcement of a general policy must conform - in the sense of including the type of provision favored by policy. Under certain circumstances, it might be manifestly unfair to require substitution of a new clause after lengthy negotiations have finally resulted in assent by the industry to a supposed final form of the code. It would be equally unfair to the members of an industry to approve a provision and thus cause them to adjust their practices to conform thereto, when the provision is so framed as to require subsequent change or elimination.

Change in codes designed to bring them into conformity with policy will be required only to the following extent:

1. As to pending codes:

When in final form and assented to by the Industry, before the date of announcement of a general policy, the code, if otherwise acceptable, will be approved. However, provisions flatly inconsistent with the essentials of such policy will be stayed, to the extent of such inconsistence, until the Industry shows why such portions should not be permanently stayed or made to conform in substance to such policy.

2. As to approved codes:

(a) There will be no change so long as such a provision is causing no difficulty, but in such cases the Research and Planning Division and Deputies must observe operation:

(b) Whenever desired by the Industry or whenever the occasion is appropriate changes will be effected:

(c) Whenever such observation reveals that such a provision in operation is troublesome administratively or is not operating in harmony with the purposes of the Act, the matter must be taken up with representatives of the industry and thereafter stayed unless a satisfactory modification can be effected with sufficient promptness.

By direction of the Administrator:

G. A. Lynch,
Administrative Officer.

EXECUTIVE ORDER

MODIFICATION OF EXECUTIVE ORDER NO. 6646 OF MARCH 14, 1934, ETC.

By virtue of and pursuant to the authority vested in me under title I of the National Industrial Recovery Act of June 16, 1933 (ch. 90, 48 Stat. 195), and in order to effectuate the purposes of said title, it is hereby ordered as follows:

1. Any person submitting a bid to any agency or instrumentality of the United States, or any State, municipal, or other public authority, to furnish goods or services at prices which, in accordance with the requirements of one or more approved codes of fair competition, must have been filed, prior to their quotation, with the Code Authority, or other designated agency, shall be held to have complied adequately with the requirements of such code of fair competition: (a) If said bidder shall quote a price or prices not more than 15 percent below his price or prices filed in accordance with the requirements of such code or codes; and (b) if, after the bids are opened, each bidder quoting a price or prices below his filed price or prices shall immediately file a copy of his bid with the Code Authority or other appropriate agency with which he is required to file prices.

2. If upon complaint made to the Administrator for Industrial Recovery, he shall find, after due investigation, that the tolerance of 15 percent provided in this order is resulting in destructive price cutting in a particular trade or industry, he is hereby authorized to issue an administrative order reducing said tolerance of 15 percent for such trade or industry to the extent he shall find necessary to prevent such destructive price cutting, but in no event to a tolerance of less than 5 percent.

3. The Administrator for Industrial Recovery is directed to cause a study to be made of the effects of this order upon the maintenance of standards of fair competition in sales to public and private customers and to report to the President thereon within six (6) months of the date of this order.

4. All prior Executive orders, including Executive Order No. 6646 of March 14, 1934, are hereby modified insofar as, and to such extent, as they may be in conflict or inconsistent with this order.

FRANKLIN D. ROOSEVELT.

The White House,
June 29, 1934.

(No. 6767)

O R D E R

GRANTING LIMITED EXEMPTION FROM PROVISIONS OF CODES OF FAIR COMPETITION IN CONNECTION WITH QUOTATIONS MADE TO GOVERNMENTAL AGENCIES

Administrative Order No. X-48

WHEREAS, certain provisions of Codes of Fair Competition, approved under Title I of the National Industrial Recovery Act, are in conflict with statutory provisions or well established procedure relating to contracts awarded by the United States, the District of Columbia, and the various States or political subdivisions thereof (all of which are hereinafter described as governmental agencies); and

It appearing to me that the exemption hereinafter granted is in furtherance of the public interest and will tend to effectuate the policy of said Title of said Act;

Pursuant to the authority vested in me under said Title of said Act by Executive Orders of the President, including Executive Order No. 6543-A, dated December 30, 1933, and otherwise, it is hereby ordered that members of industry subject to codes of fair competition who bid or may bid on contracts to be awarded by governmental agencies be and they are hereby exempted from compliance with any provisions of such codes governing the making of quotations to governmental agencies which prohibit any of the following practices and such members, notwithstanding such prohibitions contained in such codes may:

(a) Quote prices and terms of sale to governmental agencies as favorable as those permitted to be quoted to any commercial buyer for like quantities;

(b) Quote definite prices of terms of sale, not subject to adjustment resulting in increased costs during the life of the contract, for definite quantities and for definite periods not to exceed three months (unless a longer period is not permitted by any such code);

(c) Quote definite prices or terms of sale, not subject to adjustment resulting in increased costs during the life of the contract, for indefinite quantities and for definite periods not to exceed six months (unless a longer period is now permitted by any such code);

(d) Quote prices and terms to apply on contracts to become effective not more than sixty days from the date of the opening of bids;

(e) Quote prices F.O.B. point of origin and/or F.O.B. destination.

PROVIDED, HOWEVER, that the exemption hereby granted shall be limited to and operative only in connection with quotations made by such members to governmental agencies; that nothing in this order contained shall operate to permit deviation from or abandonment of open price and cost protection provisions now or hereafter contained in any such code; and that nothing in this order contained shall relieve any such member at any time from the duty of complying with all other provisions of such codes.

Washington, D.C. HUGH S. JOHNSON

OFFICE MEMORANDUM NO. 267

JULY 20, 1934.

CLASSIFICATION OF CUSTOMERS.

The following clause reflects NRA policy on this matter and should be substantially followed wherever provisions for classification of customers are included in codes:

> "The Code Authority shall cause to be formulated and keep current a classification of all types of customers of the industry. Such classification shall be subject to the disapproval of the Administrator and shall contain: (a) A complete list of all of the classes of customers of the industry, including a class to cover every known type of customer; and (b) definitions or descriptions of the several classes in terms of functions performed, or in other appropriate terms such as purchasers of defined quantities.
>
> "After submission to the Administrator, if there is no disapproval or request for suspension of action within twenty (20) days, full information concerning the classification shall be made available to all members of the industry. No one shall by intimidation, coercion, or other undue influence cause or attempt to cause the inclusion of any customer in or the exclusion of any customer from any class of customers from the classification, or the use of uniform or stipulated prices, discount, or differentials and each member of the industry may at all times classify his own customers in accordance with his own judgment."

No such proposed code provision nor any classification thereunder shall be approved if the same is designed or would tend to fix uniform prices, discounts or differentials, or to establish resale price maintenance, eliminate or suppress, or discriminate against any customer or class of customers.

Other proposed provisions concerning classification of customers are presumed to be contrary to policy.

By direction of the Administrator:

C. A. LYNCH
Administrative Officer.
10304.

OFFICE MEMORANDUM

No. 316 (*)

December 6, 1934.

PREMIUMS AND "FREE DEALS"

The following policies will govern clauses in codes relating to premiums or "free deals."

1. There should be no general provisions prohibiting the use of premiums or "free deals."

2. Certain uses of premiums or "free deals" would constitute methods of evading trade practice provisions; for example, open price provisions. The proper way to prevent such evasion of any trade practice provision is careful drafting of the provision in question. For example, in an open price provision, it should be required that all terms and conditions of sale, including premiums or "free deals" and conditions relating thereto, must be filed.

3. Although there should be no general prohibition against the use of premiums or "free deals," the use of premiums or "free deals" in the following ways may be prohibited:

(a) The use of premiums or "free deals" in ways which involve commercial bribery in any form.

(b) The use of premiums or "free deals" in ways which involve lottery in any form. The term "lottery" should be construed to include, but without limitation, any plan or arrangement whereby the premium or "Free deal" offered differs substantially in value from customer to customer of the same class, except as a result of differences in quantities purchased.

(c) The use of premiums or "free deals" in ways which involve misrepresentation, or fraud, or deception in any form. It should be noted that the use of the word "free", "gift", "gratuity", or language of similar import in connection with premiums or "free deals" cannot be declared deceptive in and of itself. It will be proper, however, to prohibit the use of this or any other language with intent to deceive, or in such a way that it does in fact mislead or deceive customers in some material particular.

(d) The giving of premiums or "free deals" to any customers when such premiums or "free deals" are not offered to all customers of the same class in the trade area.

4. Office Memorandum No. 232 is hereby superseded.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN
Administrative Officer.

(*) Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Making and Amendment, Part II, 1736."

2423.

OFFICE MEMORANDUM NO. 326*

JANUARY 5, 1935

ADVERTISING ALLOWANCES

Manufacturers or other vendors selling goods to distributors frequently find themselves desiring to purchase from their customers an advertising or promotion service which their customers can render. In purchasing such services the vendors have become accustomed to make payment by "allowing" a certain reduction from what would otherwise be the price. The payments thus made have become known as "advertising allowances".

Code provisions declaring the giving of advertising allowances an unfair practice would not change the basic facts that sellers must price their goods to buyers and that certain buyers have promotion services which they are desirous of selling for which those who sell to them are willing to pay. The remedy for such suspicion, secrecy, confusion, and misrepresentation as may be connected with advertising allowances, lies in:

(a) Clearly separating and thus establishing the distinct identities of the two activities which are involved in giving advertising allowances.

(b) Causing that part of the advertising allowance which is actually a price reduction to appear in prices - reported prices, if the industry or trade has an open price plan.

(c) Causing that part of the advertising allowance which is actually a payment for advertising or promotion service to appear as such with definite description of the service for which it is given, and with such publicity, where publicity is practicable, that it is unlikely that the payment will be more than the competitive worth of the services involved.

Accordingly, it is NRA policy that an industry desiring to regulate advertising allowances should not be permitted to do so by general prohibitions, by restrictions on the basis of products or types of distributors, or otherwise than in accordance with the following:

1. That no member of an industry or trade shall designate as an "advertising allowance", "promotion allowance" or similar term, any price reduction, discount, bonus, rebate, or other form of price allowance or concession, or any consideration for advertising or promotion services offered or given by him to any customer.

2. That no member of an industry or trade shall offer or give any consideration for advertising or promotion services to any customer except for definite and specific advertising or promotion services.

3. Agreements to purchase advertising services from customers shall be made in written contracts separate from sales contracts.

4. Such contracts shall specifically and completely set out the promotion services to be performed, together with the practice consideration to be paid therefor, the method of determining performance, and all other terms and conditions relating thereto.

5. Some arrangement for publicity may be made, where effective machinery therefor can be devised. In considering any arrangement for publicity, care should be taken to avoid machinery so cumbersome that its cost will outweigh benefits to be gained.

There is attached a draft section (Exhibit A) suggested for use in codes in which it is desired to regulate advertising allowances.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN,
Administrative Officer.

*Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Making and Amendment - Basic Code - Trade Practices - Part II-3031.15" when released in Office Manual Form.

123

EXHIBIT A

Section____. No member of the trade/industry shall designate as an "advertising allowance", a "promotion allowance", or by a similar term, any price reduction, discount, bonus, rebate, concession, or other form of allowance, or any consideration for advertising or promotion services, offered or given by him to any customer.

No member of the trade/industry shall offer or give any consideration merely for "pushing", "advertising", or otherwise than for definite ... and specific advertising or promotion services. Such consideration shall be given only pursuant to a separate written contract therefor, which contract shall specifically and completely set forth the advertising or promotion services (in such manner that their specific character may be understood by other members of the trade/industry and their customers) to be performed by the recipient of said consideration, the precise consideration to be paid or given therefor by said member, the method of determining performances, and all other terms and conditions relating thereto.

The following are examples of provisions for publicity which may be found workable and desirable by particular industries:

Example 1. Immediately upon the making of any such contract for advertising or promotion services by any member of the trade/industry, a true copy thereof shall be filed by said member with a confidential and disinterested agent of the Code Authority (as provided for in this code), or, if none, then with such an agent to be designated by the National Industrial Recovery Board. Said agent shall maintain all copies of such contracts on file until six (6) months after the termination thereof, and shall make the same available at his office for inspection at all reasonable times by all members of the trade/industry, and all of their customers and shall distribute a true copy of any such contract to any member of the industry or any customer who applies therefor and offers to pay the cost actually incurred by the Code Authority in the actual preparation and distribution thereof; provided, that no such inspection or copy shall be permitted or made available to any person until permitted or made available to all members of the industry and their customers, as aforesaid. Upon request, said agent shall furnish to the National Industrial Recovery Board, or any duly designated agent of said Board, copies of any such contract.

Example 2. Immediately upon the making of any such contract for advertising or promotion services by any member of the trade/industry, a ... true copy thereof shall be filed with a confidential and disinterested agent of the Code Authority (as provided for in this code), or, if none, then with such an agent to be designated by the National Industrial Recovery Board. Said agent shall thereupon proceed to have copies of such contract published in a journal or journals or other appropriate medium of general circulation among members of the trade/industry.

OFFICE MEMORANDUM NO. 327*

January 10, 1935

LIMITATION OF FORWARD CONTRACTS

The following statement will govern provisions in codes relating to forward contracts:

1. NRA policy generally does not favor code provisions which would limit the permissible period of forward contracts to sell.

2. Policy favors provisions, having the purpose of improving competitive conditions, which require the filing by each member of an industry, in accordance with the open price provisions of Office Memorandum No. 228, of his practices as to forward contracts to sell.

3. In cases in which it is reasonably clear that the requirement for filing would be ineffectual, provisions which would limit the duration of forward contracts to sell may be approved, if the following conditions are met:

(a) The maximum contract period set is reasonable, with respect to the nature of the industry's products and its trade practices.

(b) Such provisions are note more stringent than the customary practice within the industry over a preceding period of at least one year.

(c) Adequate consideration is given to the question of necessity of including a provision as to special types of contracts which may require exceptional treatment, such as contracts to furnish materials for a specific project or "cost plus" contracts.

(d) Compliance can be reasonably anticipated to a degree which will avoid any substantial increase in the administrative and enforcement burden of NRA.

(e) The provision in operation will not tend to render production and employment less stable.

(f) Adequate consideration is given to the effect of the provision upon purchasers.

By direction of the National Industrial Recovery Board:

W. A. HARRIMAN
Administrative Officer.

*Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Making and Amendment, Part II -

OFFICE MEMORANDUM

No. 334*

January 31, 1935

PRESCRIBING PROCEDURE FOR STATISTICAL REPORTING

The following procedure is prescribed for statistical reporting:

(1) The Research and Planning Division is designated as the only NRA division authorized to collect statistics from code authorities; all statistical reports and correspondence relating thereto now residing in other NRA files to be transferred to said division; and for the purpose of statistical reporting said division to make its first contacts with code authorities through the Deputies and thenceforth deal directly therewith;

(2) The Research and Planning Division is charged with the duty of cooperating with the Compliance Division in developing reports for compliance, with the understanding that the making of decisions as to the extent and form of all statistical reporting be lodged with Research and Planning;

(3) The Research and Planning Division will request code authorities to submit their statistical forms and procedures, and changes therein, to the Research and Planning Division for review and advice, and to deposit with the said division two copies of all summaries of price, production, labor and other statistical data, which they have collected, promptly upon preparation;

(4) The Research and Planning Division is hereby empowered to investigate the reporting systems of code authorities and to audit the statistical reports submitted by them;

(5) The Research and Planning Division is hereby authorized to collect directly from members of the industry such special information, not available elsewhere, as is necessary from time to time for recommendations on questions of policy.

By direction of the National Industrial Recovery Board.

W. A. HARRIMAN
Administrative Officer.

*Note--The substance of this memorandum will be incorporated in the NRA Office Manual under "Code Administration--Planning, Fact Finding and Education--Fact Finding and Collection of Statistics--Part III-2200" when released in Office Manual form.

1631

April 23, 1935

NATIONAL INDUSTRIAL RECOVERY BOARD

ADMINISTRATIVE POLICY

New Series No. 1

Administration of codes requires the further clarification and extension of certain administrative policies. The National Industrial Recovery Board has caused special studies to be made within NRA and has held public hearings to aid in this development.

To expedite administrative procedure, announcements of broad policies will be made when statements in any particular area are ready. These broad expressions of policy will be later supplemented, when necessary, by more detailed statements.

Three statements follow. Two are of a general character; and one is the first of a series dealing with specific problems:

I. Administrative Steps for the Application of Policy.

II. Introduction to General Price Policy.

III. The Problem of Open Price Filing.

ADMINISTRATIVE STEPS FOR APPLICATION OF POLICY

A. General Administrative Guidance
(connection with provisions contrary to announced policy)

The Board recognizes that a policy is not self-operative, and that its announcement necessitates a program of ways and means to render it effective. The following is for general administrative guidance in dealing with cases in which proposals of code provisions are contrary to announced policy.

(1) If approval is asked of a proposal which is contrary to announced policy and insufficent ground is shown for exception from such policy, the deputy will give the applicant a prompt decision to that effect. This decision will be accompanied, if possible, with suggestions for the modification of the proposal designed to cause it to conform to policy.

(2) If a provision in an existing code is contrary to announced policy, and if further action by NRA is required to make it operative, the provision will be left inoperative pending Congressional decision concerning the jurisdiction and objectives of the NRA, unless the industry formally requests earlier action. If such request is made, an opportunity will be furnished the sponsors of the provision to show sufficient cause why it should be made operative, with or without modifications. After adequate opportunity to be heard has been given interested parties, decision will promptly be made whether to make the provision operative or to delete it.

(3) If a provision contrary to announced policy has been temporarily approved for a trial period, an opportunity will be furnished the sponsors of the provision to show sufficient cause for (a) extending the period of trial or (b) making the provision permanent. After adequate opportunity to be heard has been given interested parties, decision will promptly be made whether to continue the provision or to allow it to lapse at its next expiration date.

(4) If a provision contrary to announced policy is now fully operative in an existing code, there may be, pending legislative redefinition of the jurisdiction and objectives of NRA, either of two types of situation, leading to different courses of action:

(a) If no adequate showing has been made to NRA that such provision is in conflict with the interests of the public or the justifiable interests of any group, arrangements for observation will be made; but no other action will be taken in the first instance.

(b) If there is adequate reason to believe that such a provision is in conflict with the interests of the public or the justifiable interests of any group, the industry will be offered an opportunity to negotiate with NRA or to be heard on the subject. If, after such a hearing or negotiation such conflict still appears and a prompt solution cannot be reached, the provision in question will be deleted, or suspended, or temporarily modified, pending approval of a satisfactory substitute or modification.

(5) After Congressional redefinition of the jurisdiction and objectives of NRA, over tive or inover tive code provisions which are inconsistent with the new Act will be promptly reconsidered.

B. Supervision and Observation of Policies

Supervision of the application of policy decisions has been delegated to the Code Administration Director. He will be responsible for conveying to the members of industry, through proper organization channels, announced policies and the considerations underlying them.

At least three persons who will aid in the interpretation of policy to divisional and deputy administrators will be appointed. One will specialize on price and other trade practice policy, one on labor policy and one on code administration policy. Their duties will not be administrative. They will submit to the Code Administration Director regular reports on problems requiring treatment, and suggestions concerning the nature and frequency of reports which should be made upon the operation of codes by divisional administrators, deputies and administration members.

All executives and major staff officials, especially division and deputy administrators and administration members who are in continual touch with the problems of industry, will observe the actual operation of policy decisions.

Special research and collection of the results of observation of the operation of codes will be organized by the Research and Planning Division under the direction of the Board. Reports and surveys will be made to the Board and will be made available, as appropriate, for the use of the administrative and advisory personnel. In the discretion of the Board such reports and surveys will be issued by the Board, with or without its recommendations or conclusions, for the information of industry and the public.

II

INTRODUCTION TO GENERAL PRICE POLICY

Industry is the instrument through which goods or services are supplied. The producer, the laborer, and the consumer alike have a stake in its efficient and orderly operation. The facilitating of adjustments among these several interests and their individual members is the function of price. Price also facilitates adjustments among the many industries whose products compete with one another for the consumer's dollar. Unless price operates effictively to determine these working arrangemnts among the interested parties, some deliberate arrangement or planned control must be permitted or established. This would necessarily limit severely the area of the individual business man's discretion.

In regard to prices and price-making, industries present the greatest variety. But in so far as government policy is concerned, they fall roughly into three distinct groups. The first group -- of which education, the highways, the postal service, and the police are typical examples -- are government undertakings. In their operation the charge for the service has little relation to the cost; price, if there is any, has been fixed by the government according to some such principle as the encouragement of the wide use of the service. The second group -- generally called public utilities -- includes industries usually privately owned, monopolistic in tendency, and subject to regulation. In such cases, a governmental commission usually fixes rates predicated upon "a fair return upon a fair value." The third group -- comprehending the greater part of business activity -- is free enterprise. In this domain government has customarily limited its efforts to maintaining and regulating competition. It has left the actual making of price to the market.

This third group -- much of which is in the jurisdiction of the NRA -- price is not fixed by a governmental authority. It is supposed to be determined in an open market where it is assumed to emerge from the operation of all the competitive forces which are included in the shorthand words "supply" and "demand". The system is one of crude checks and balances. Producers are balanced against consumers; and the efforts of buyer or seller to drive too hard a bargain are presumably checked by the competition of other buyers or sellers in the same or in competing bussinesses. In so far as either party is able to go elsewhere in search of a better bargain, he has some protection against the bargaining power of the other party. The principle of price-making by competition in a free and open market is established in the common law, the anti-trust acts, and public policy.

The competitive system is often spoken of as an automatic self-regulating mechanism. Government and business are said to have separate provinces; government is to keep hands off and leave the determination of questions affecting business to the market. But as a matter of fact the economic order is not now, and never was, self-regulating. To the end of securing an orderly, efficient, and humane industrial system, the regulation of competition has proceeded along three distinct lines.

First, government intervenes to secure the maintenance or restoration of competitive conditions. An understanding among interested business men may prevent the establishment of a competitive price. In consequence, monopoly, combination and conspiracy in restraint of trade is illegal. In the anti-trust acts an attempt is made to keep industries open to all who will take their chances, and to maintain " a fair field and no favors". The prohibition against monopoly is written into the anti-trust laws, the National Industrial Recovery Act, and the codes.

Second, government undertakes to regulate the plane of competition in the field of wages and working conditions. In many instances a small minority, who seek to gain by disregard of labor standards, may have their way against the wish of the great majority in the industry. They may make labor suffer unduly low wages, long hours, and intolerable working conditions. Accordingly, government steps in to fix standards of safety and health, to establish workmen's compensation and to regulate hours of labor. The labor provisions in the codes represent a fuller development of such necessary intervention.

Third, government undertakes to regulate the plane of competition in the field of trade practices. In the conduct of business, practices grow up which are the customs of the industry. These practices are among the rules of the game for the competitive struggle, and the function of government is to intervene to insure fairness of opportunity. In the heat of the struggle, a few firms may resort to unfair practices -- such as the misrepresentation of goods and secret discriminations -- which their competitors are forced to adopt. Thus a minority has it in its power greatly to affect, and sometimes to determine the conditions of survival. Government, therefore, must see to it that trade practices are freed from abuse and are made proper instruments of business and public policy.

A price policy should of necessity be stated in general terms. Its end is to cause price to perform its essential functions. The standard alike in the law of the land and in public policy is a competitive price made in an open market. It should not be perverted by such influences as ignorance, malice, deception, or collusion. Such barriers to the effective operation of competition must be removed; the forces which tend to destroy standards and to create unfair methods must be controlled; and trade practices must be harnessed to the industrial and social ends they should serve.

The establishment of a plane of competition involves a consideration of all the arrangements, usages, and customs under which prices are made. These characteristics of a business are just as significant as the technology employed in the physical process of production or marketing. They consist of devices and procedures -- such as a free market, open price filing, quantity discounts, cost accountancy, and the like. All of these are mechanisms; no one of them is good or bad in itself; the merit or demerit of each comes from the use to which it is actually put. Nor can any device or procedure be judged alone, for it always appears in combination with other devices. Moreover, in considering the totality of a business in operation, all these devices together must be judged in relation to its technical operations and the character of its growth.

A great many of these devices and procedures are the inventions of business. A group of them have now the approval of administrative bodies and the courts. Such "fair practices" may be employed freely. Another group are still on trial; their range of usefulness and their accord with public policy have not yet been fully demonstrated. They should be cautiously employed, and the burden of proof is upon the industry wishing to use them. A third group, forged in the heat of the competitive struggle, must be freed of their capacity for unfair use before they can be generally employed. One of the great tasks of the NRA is to develop trade practices, observe carefully their operation, and fit them for service in the larger task of maintaining order and fairness in industrial relations.

It follows that a general statement of policy can present no more than an approach to a specific problem. Industries are far from being enough alike to permit identical treatment. They differ in structure, in organization, in the usages of business, and in their places in the national and the international economy. They are currently at very different stages of development. They are susceptible to different degrees and types of supervision. In some instances stated policy, however appropriate to the usual case, might not accomplish the desired results if applied to a particular industry. Therefore, in certain exceptional cases, provisions usually in accord with policy may be limited or avoided in the case of certain industries. In other exceptional cases provisions usually contrary to policy may be acceptable. But all such departures from stated policy must be justified by the values which competition is intended to serve.

But, whatever the necessity for variation in detail, the general objectives of price policy are definite. It must promote fairness between the parties to an industry and make its contribution to the betterment of the standard of living. A control of production is inevitable under any industrial system. A long experience has led us to leave that problem to the open market. In a few industries, in which competition has proved unusually disorderly, it may be necessary to intervene to bring production into line with demand; but such intervention should avoid "restriction of output" and should aim at the kind of equation between production and consumption as the market is supposed to effect. The strategy of policy must find expression in a multitude of decisions. But its end is single -- an economy, not of scarcity but of plenty.

In other words, means and ends must not be confused. Means should be flexible, requiring the use of a miscellany of devices and procedures. Objectives should be stable. The goal sought is the establishment of conditions under which in a free and open market competition may determine a fair price.

III

THE PROBLEM OF OPEN PRICE FILING

A. End To Be Served

Open price filing is a mere device. Its potentialities for benefit or mischief depend upon the purpose to which it is put and the methods which attend its use. The standard by which its promotion should be judged is price making similar to that which would be afforded by an open and competitive market such as an organized commodity exchange. In such a market all the forces of demand and supply converge, the transactions are a matter of public record, buyer and seller can accommodate their activities to the course of events, every factor of significance has a chance to be registered, and a changing price represents all that affects the current value of a commodity.

The ideal of an open and competitive market can seldom be fully attained. The conditions under which various industries are carried on are diverse; the obstacles to open and free competition are many; and the devices and procedures for making markets open have been inadequately developed. In general the open market is currently limited to staple commodities, capable of standardization, and objects of a continuous flow of trade. Cotton and wheat are examples of wares susceptible to open market operations.

But where there is no open market, its functions still need to be performed. Their performance may be rendered difficult or impossible by the local character of trade, irregularity or infrequency of purchase, restraint of trade, or some other condition.

NRA has hoped to approximate the objectives of the open market by a system of open price filing to be applied under appropriate circumstances. This takes the form of the collection and general circulation of the price quotations at which members of an industry indicate a readiness to sell. A "file" is not a market, and the process of record and circulation lacks the speed and completeness of a continuous report of a series of commodity exchange transactions. But it is possible for the open file to allow buyers and sellers to accommodate their activities to competitive conditions, to fix limits to the spread of quotations at any given time, and to tend to make price perform its industrial function.

To these ends open price filing should, so far as possible, be made to furnish a public record of price movements, provide a check on discrimination among customers, reduce the amount of deception among buyers and sellers, give the parties concerned a fuller knowledge of conditions affecting the market, and promote and safeguard the integrity of the process of competitive price making. It should be used to remove the ignorance which the small enterpriser has about the activities of his larger competitors, and thereby to insure him a measure of protection against their rivalry.

The open market is the desired institution; open price filing is an imperfect substitute. The open market fixed the standard of performance for open price filing.

Like all other procedures, open price filing is not immune to abuse. In combination with other procedures and understanding it may be employed to maintain a price fixed by a combination of producers. It may be used to expose to trade punishment or the damaging ill will of his competitors the individual whose prices are out of line. But in such instances the evil almost invariably lies in extra-code arrangements which limit competition and for which the open price filing device becomes a convenient instrument.

It was hardly to be expected that open price filing should immediately attain its fullest possible usefulness. Abuses such as have appeared in a number of industries were to be anticipated. These abuses must be overcome. However, the experience of NRA has indicated the possibility of developing safeguards, and much of the testimony at the January, 1935, hearings of price policy confirms the belief that further experiment with open prices is desirable. Time will be required to perfect the device, discover its full possibilities, and contrive ways to guard it against abuse. Ingenuity will be required to adapt it to many industries in which products and conditions of sale are diverse. A continuous and intelligent observation of its operation and a prompt correction of abuses are essential to its fullest usefulness.

B. Essential Characteristics of an Open Price Provision

Price filing should be administered to serve the ends of a free and open market. An impartial and confidential body should be the administrative agency in order that price-lists may be distributed to members of the industry and their customers without partiality and without efforts to influence the quotations. The prices must be genuinely available to all customers and members of the industry. If the body with which prices are filed is a private agency, its activities must be subject to the immediate oversight of the government. It is also essential to the purposes of open price filing that the filed prices be those at which sales are actually to take place rather than merely minima above which members of an industry may secretly vary their prices as they choose or maxima from which discounts are to be allowed.

The general presumption must be against the use of the waiting period and the burden of proof is upon the industry which wishes to employ it. A protracted experience with the waiting period has revealed shortcomings, for which no one is consciously to blame and which are not easily avoided or corrected. A waiting period is likely to freeze a competitive process which should be kept active and to impair the very purpose for which sealed bids are used. In an open market there is no counterpart of such a device. When prices are rising a flood of orders during the waiting period may unsettle a future market. When prices are too high the incentive to reduce them in order to get more volume of sales may be lessened by the knowledge that price reductions will not become effective until competitors, by similar reductions, have destroyed most of the sales advantage.

Probably the best case for a waiting period can be made for industries in which sales are of large size and small number, members are many and widely scattered, and information about prices cannot, for some reason, be quickly circulated. But even in such industries the burden of proof must be upon those who wish to employ a waiting period.

In industries where prices immediately effective are manipulated for the purpose of allowing large discriminatory discounts to privileged customers, it may be necessary to impose some limit upon the frequency of price change. In such rare cases this can be done by provisions requiring that a price, once effective, must stay in effect for some reasonable minimum period. A waiting period before the price becomes effective is not necessary in dealing with this problem.

C. The Field for the Use of Open Pricing

Open price systems should not be indiscriminately applied to the entire range of American industry. In some industries the technical problems presented by an open price system would be insuperable. If commodities differ so widely in quality, character, and accompanying service that prices are likely to vary with each sale, or if the number of concerns and products is very large, an open price filing system may require much effort and give little usable information. If through custom or convenience prices remain stable and market changes lie mostly in the character of the goods sold, price reporting may be a meaningless process. If commodities are highly perishable and their supply fluctuates rapidly, even the quickest system of recording current prices would be a burden upon many business men and consumers. The feasibility of an open price system increases in so far as price competition is active, the products of the industry can be clearly identified, and price changes are frequent without being incessant.

A price is not just a price, but a price of something. It is meaningless apart from information about the quality of the goods and the terms of sale. Accordingly, to be informative, all the factors that help to give identity to a price should be reported. In industries in which this cannot be done it is questionable whether an open price system can be effectively used. It is difficult to provide properly for such information. Identification of articles and their qualities, description of how discounts are related to quantity and to the classification of customers, indication of the way in which prices vary with varying transportation costs - these are complicated matters. Yet any one of the terms of sale may be used, not only by the unscrupulous but even by the independent minded merchant, in a way which impairs the achievement of the open market purposes contemplated in the use of the device. It is possible, for example, to confuse the meaning of the schedule of prices by withholding an adequate definition of classes of customers. Therefore, the relation of quality, quantity, class of customer, and various terms of sale to open price filing will later be given separate treatment.

Observation, ingenuity, and patience may permit the extension of open price filing into what at the moment seems to be impracticable territory. Even now it may be applied to industries in which goods are not strictly standardized; for the members of an industry have a practical knowledge of each other's wares, and customers can be educated to the larger differences among grades and brands. However, in most of these cases the difficulties which arise from variations of product and service are such that open price systems might confuse rather than reveal what is happening in the market. The meaning of a price may depend upon who quotes it. The name of the seller may be necessary to an identification of the quality of the product. It may be necessary to indicate whether the article in the requisite quantity can be supplied or whether the price is only nominal. Hence, to make open-pricing effective, the identy of the seller often needs to be revealed.

In certain industries open price systems, though feasible, involve such probabilities of serious abuse that they should be avoided. These are industries in which the need is to preserve competition against attack rather than to provide facilities by which competition may be made more informed. An industry in which the dominance of an enterprise or group is intimidating to smaller independents is not a suitable field for open pricing; for the identification of the smaller concern's prices would, in such cases, be inconsistent with the preservation of its freedom to make whatever prices it may choose. Industries in which the chief obstacle to collusion is the difficulty of devising machinery for price understanding are equally unsuitable to open price systems, since even the best open price system may be used as a collusive device. The field for open pricing is that in which competition tends to be active but ill-informed and chaotic; not that in which competition tends to evolve into monopolistic restraint.

D. Price Statistics as an Alternative

There may be many industries in which the ends of public policy will be adequately served by price filing or reporting as it was understood generally and accepted by the courts even prior to NRA. Such are systems for the open reporting of price summaries, price ranges and sales volumes based upon records of past transactions. Such a reporting system involves neither the same technical problems nor, if the identities of sellers are concealed in the summaries, as great dangers of abuse as necessarily appear with current price filing. In such industries, when names of sellers are not to be disclosed, a form of summary statement must be devised adapted to the circumstances and detailed enough to serve those concerned. The contrivance of this form requires a nice balance between the safeguards of secrecy and the necessity of information.

E. Price-Filing not Price-Fixing

It is hardly necessary to say that open price filing is not price-fixing. Nor should evidence of collusion in their making be inferred from a uniformity in the prices which are filed. Competition is supposed to effect uniformity of prices through an open market; and approximation to uniformity is almost certain to result from the proper maintenance of open price filing. It is when the prices quoted by the members of an industry move in concert faster than competitors

can easily accomodate themselves to each other's activities or when prices move uniformly and sharply upward in contrast to trends in related industries that evidence of collusion is present. Open price filing is a device; price-fixing is a business policy in operation.

F. The Need for Flexibility

Open price filing should be applied to specific industries in the light of the particular circumstances rather than as a rigid formula. In each case attention should be given to such considerations as the frequency and extent of price change, the complexity of terms of sale, the difficulty of identifying an article, the number and geographical diffusion of members of the industry, the degree of price competition, and the economic importance of the article. In certain instances, for example where the finished product of one industry is the raw material of another, it may be necessary to take account of conditions in correlative industries. But however difficult may be the accommodation of the device to industrial circumstances, the ends which the open market should serve are definite guides.

The National Industrial Recovery Board feels that the device of open price filing should be perfected, guarded against abuse and applied with discrimination in the industries to which it is appropriate. In certain industries and for certain commodities for which an organized open market is not practical, the virtues of an organized commodity exchange may be approximated through the device of open price filing.

OFFICE OF THE NATIONAL RECOVERY ADMINISTRATION

THE DIVISION OF REVIEW

THE WORK OF THE DIVISION OF REVIEW

Executive Order No. 7075, dated June 15, 1935, established the Division of Review of the National Recovery Administration. The pertinent part of the Executive Order reads thus:

> The Division of Review shall assemble, analyze, and report upon the statistical information and records of experience of the operations of the various trades and industries heretofore subject to codes of fair competition, shall study the effects of such codes upon trade, industrial and labor conditions in general, and other related matters, shall make available for the protection and promotion of the public interest an adequate review of the effects of the Administration of Title I of the National Industrial Recovery Act, and the principles and policies put into effect thereunder, and shall otherwise aid the President in carrying out his functions under the said Title. I hereby appoint Leon C. Marshall, Director of the Division of Review.

The study sections set up in the Division of Review covered these areas: industry studies, foreign trade studies, labor studies, trade practice studies, statistical studies, legal studies, administration studies, miscellaneous studies, and the writing of code histories. The materials which were produced by these sections are indicated below.

Except for the Code Histories, all items mentioned below are scheduled to be in mimeographed form by April 1, 1936.

THE CODE HISTORIES

The Code Histories are documented accounts of the formation and administration of the codes. They contain the definition of the industry and the principal products thereof; the classes of members in the industry; the history of code formation including an account of the sponsoring organizations, the conferences, negotiations and hearings which were held, and the activities in connection with obtaining approval of the code; the history of the administration of the code, covering the organization and operation of the code authority, the difficulties encountered in administration, the extent of compliance or non-compliance, and the general success or lack of success of the code; and an analysis of the operation of code provisions dealing with wages, hours, trade practices, and other provisions. These and other matters are canvassed not only in terms of the materials to be found in the files, but also in terms of the experiences of the deputies and others concerned with code formation and administration.

The Code Histories, (including histories of certain NRA units or agencies) are not mimeographed. They are to be turned over to the Department of Commerce in typewritten form. All told, approximately eight hundred and fifty (850) histories will be completed. This number includes all of the approved codes and some of the unapproved codes. (In Work Materials No. 18, Contents of Code Histories, will be found the outline which governed the preparation of Code Histories.)

(In the case of all approved codes and also in the case of some codes not carried to final approval, there are in NRA files further materials on industries. Particularly worthy of mention are the Volumes I, II and III which constitute the material officially submitted to the President in support of the recommendation for approval of each code. These volumes

Women's Apparel Industry, Some Aspects of the

Trade Practice Studies

Commodities, Information Concerning: A Study of NRA and Related Experiences in Control
Distribution, Manufacturers' Control of: Trade Practice Provisions in Selected NRA Codes
Distributive Relations in the Asbestos Industry
Design Piracy: The Problem and Its Treatment Under NRA Codes
Electrical Mfg. Industry: Price Filing Study
Fertilizer Industry: Price Filing Study
Geographical Price Relations Under Codes of Fair Competition, Control of
Minimum Price Regulation Under Codes of Fair Competition
Multiple Basing Point System in the Lime Industry: Operation of the
Price Control in the Coffee Industry
Price Filing Under NRA Codes
Production Control in the Ice Industry
Production Control, Case Studies in
Resale Price Maintenance Legislation in the United States
Retail Price Cutting, Restriction of, with special Emphasis on The Drug Industry.
Trade Practice Rules of The Federal Trade Commission (1914-1936): A classification for comparision with Trade Practice Provisions of NRA Codes.

Labor Studies

Cap and Cloth Hat Industry, Commission Report on Wage Differentials in
Earnings in Selected Manufacturing Industries, by States, 1933-35
Employment, Payrolls, Hours, and Wages in 115 Selected Code Industries 1933-35
Fur Manufacturing, Commission Report on Wages and Hours in
Hours and Wages in American Industry
Labor Program Under the National Industrial Recovery Act, The
  Part A. Introduction
  Part B. Control of Hours and Reemployment
  Part C. Control of Wages
  Part D. Control of Other Conditions of Employment
  Part E. Section 7(a) of the Recovery Act
Materials in the Field of Industrial Relations
PRA Census of Employment, June, October, 1933
Puerto Rico Needlework, Homeworkers Survey

Administrative Studies

Administrative and Legal Aspects of Stays, Exemptions and Exceptions, Code Amendments, Conditional Orders of Approval
Administrative Interpretations of NRA Codes
Administrative Law and Procedure under the NIRA
Agreements Under Sections 4(a) and 7(b) of the NIRA
Approved Codes in Industry Groups, Classification of
Basic Code, the -- (Administrative Order X-61)
Code Authorities and Their part in the Administration of the NIRA
  Part A. Introduction
  Part B. Nature, Composition and Organization of Code Authorities

Part C. Activities of the Code Authorities
Part D. Code Authority Finances
Part E. Summary and Evaluation
Code Compliance Activities of the NRA
Code Making Program of the NRA in the Territories, The
Code Provisions and Related Subjects, Policy Statements Concerning
Content of NIRA Administrative Legislation
Part A. Executive and Administrative Orders
Part B. Labor Provisions in the Codes
Part C. Trade Practice Provisions in the Codes
Part D. Administrative Provisions in the Codes
Part E. Agreements under Sections 4(a) and 7(b)
Part F. A Type Case: The Cotton Textile Code
Labels Under NRA, A Study of
Model Code and Model Provisions for Codes, Development of
National Recovery Administration, The: A Review of its Organization and Activities
NRA Insignia
President's Reemployment Agreement, The
President's Reemployment Agreement, Substitutions in Connection with the
Prison Labor Problem under NRA and the Prison Compact, The
Problems of Administration in the Overlapping of Code Definitions of Industries and Trades, Multiple Code Coverage, Classifying Individual Members of Industries and Trades
Relationship of NRA to Government Contracts and Contracts Involving the Use of Government Funds
Relationship of NRA with States and Municipalities
Sheltered Workshops Under NRA
Uncodified Industries: A Study of Factors Limiting the Code Making Program

Legal Studies

Anti-Trust Laws and Unfair Competition
Collective Bargaining Agreements, the Right of Individual Employees to Enforce
Commerce Clause, Federal Regulation of the Employer-Employee Relationship Under the
Delegation of Power, Certain Phases of the Principle of, with Reference to Federal Industrial Regulatory Legislation
Enforcement, Extra-Judicial Methods of
Federal Regulation through the Joint Employment of the Power of Taxation and the Spending Power
Government Contract Provisions as a Means of Establishing Proper Economic Standards, Legal Memorandum on Possibility of
Industrial Relations in Australia, Regulation of
Intrastate Activities Which so Affect Interstate Commerce as to Bring them Under the Commerce Clause, Cases on
Legislative Possibilities of the State Constitutions
Post Office and Post Road Power -- Can it be Used as a Means of Federal Industrial Regulation?
State Recovery Legislation in Aid of Federal Recovery Legislation History and Analysis
Tariff Rates to Secure Proper Standards of Wages and Hours, the Possibility of Variation in
Trade Practices and the Anti-Trust Laws
Treaty Making Power of the United States
War Power, Can it be Used as a Means of Federal Regulation of Child Labor?

9768--4.

THE EVIDENCE STUDIES SERIES

The Evidence Studies were originally undertaken to gather material for pending court cases. After the Schechter decision the project was continued in order to assemble data for use in connection with the studies of the Division of Review. The data are particularly concerned with the nature, size and operations of the industry; and with the relation of the industry to interstate commerce. The industries covered by the Evidence Studies account for more than one-half of the total number of workers under codes. The list of those studies follows:

Automobile Manufacturing Industry
Automotive Parts and Equipment Industry
Baking Industry
Boot and Shoe Manufacturing Industry
Bottled Soft Drink Industry
Builders' Supplies Industry
Canning Industry
Chemical Manufacturing Industry
Cigar Manufacturing Industry
Coat and Suit Industry
Construction Industry
Cotton Garment Industry
Dress Manufacturing Industry
Electrical Contracting Industry
Electrical Manufacturing Industry
Fabricated Metal Products Mfg. and Metal Finishing and Metal Coating Industry
Fishery Industry
Furniture Manufacturing Industry
General Contractors Industry
Graphic Arts Industry
Gray Iron Foundry Industry
Hosiery Industry
Infant's and Children's Wear Industry
Iron and Steel Industry
Leather Industry
Lumber and Timber Products Industry
Mason Contractors Industry
Men's Clothing Industry
Motion Picture Industry
Motor Vehicle Retailing Trade
Needlework Industry of Puerto Rico
Painting and Paperhanging Industry
Photo Engraving Industry
Plumbing Contracting Industry
Retail Lumber Industry
Retail Trade Industry
Retail Tire and Battery Trade Industry
Rubber Manufacturing Industry
Rubber Tire Manufacturing Industry
Shipbuilding Industry
Silk Textile Industry
Structural Clay Products Industry
Throwing Industry
Trucking Industry
Waste Materials Industry
Wholesale and Retail Food Industry
Wholesale Fresh Fruit and Vegetable Industry
Wool Textile Industry

THE STATISTICAL MATERIALS SERIES

This series is supplementary to the Evidence Studies Series. The reports include data on establishments, firms, employment, payrolls, wages, hours, production capacities, shipments, sales, consumption, stocks, prices, material costs, failures, exports and imports. They also include notes on the principal qualifications that should be observed in using the data, the technical methods employed, and the applicability of the material to the study of the industries concerned. The following numbers appear in the series:
9768—5.

Asphalt Shingle and Roofing Industry
Business Furniture
Candy Manufacturing Industry
Carpet and Rug Industry
Cement Industry
Cleaning and Dyeing Trade
Coffee Industry
Copper and Brass Mill Products Industry
Cotton Textile Industry
Electrical Manufacturing Industry
Fertilizer Industry
Funeral Supply Industry
Glass Container Industry
Ice Manufacturing Industry
Knitted Outerwear Industry
Paint, Varnish, and Lacquer, Mfg. Industry
Plumbing Fixtures Industry
Rayon and Synthetic Yarn Producing Industry
Salt Producing Industry

THE COVERAGE

The original, and approved, plan of the Division of Review contemplated resources sufficient (a) to prepare some 1200 histories of codes and NRA units or agencies, (b) to consolidate and index the NRA files containing some 40,000,000 pieces, (c) to engage in extensive field work, (d) to secure much aid from established statistical agencies of government, (e) to assemble a considerable number of experts in various fields, (f) to conduct approximately 25% more studies than are listed above, and (g) to prepare a comprehensive summary report.

Because of reductions made in personnel and in use of outside experts, limitation of access to field work and research agencies, and lack of jurisdiction over files, the projected plan was necessarily curtailed. The most serious curtailments were the omission of the comprehensive summary report; the dropping of certain studies and the reduction in the coverage of other studies; and the abandonment of the consolidation and indexing of the files. Fortunately, there is reason to hope that the files may yet be cared for under other auspices.

Notwithstanding these limitations, if the files are ultimately consolidated and indexed the exploration of the NRA materials will have been sufficient to make them accessible and highly useful. They constitute the largest and richest single body of information concerning the problems and operations of industry ever assembled in any nation.

L. C. Marshall,
Director, Division of Review.

9768—6.